

FILED
DEC 21 1998
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CHARLES ANTHONY FARRELL,
JAMES W. FARRELL, JAMES L.
ERICKSTEEN, GARY L. MOORE,
JILL HALL, and GUIDO BENSBERG,

Defendants

Civil Action 97cv1684-TW (JAH)

**FINAL JUDGMENT AS TO
JAMES L. ERICKSTEEN**

Plaintiff SECURITIES AND EXCHANGE COMMISSION (the "COMMISSION"),
having duly commenced this action by filing its COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF (the "COMPLAINT"), and defendant JAMES L. ERICKSTEEN ("ERICKSTEEN"), in
his CONSENT AND UNDERTAKINGS OF JAMES L. ERICKSTEEN (the "CONSENT"),
having entered a general appearance herein, having admitted the jurisdiction of this Court over him
and over the subject matter of this action, and 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
withdrawn his answer to the COMPLAINT without admitting or denying any of the allegations of
the COMPLAINT, except as to jurisdiction, which he admits, and without trial, argument or

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1 adjudication of any issue of fact or law, having consented to the entry of this FINAL JUDGMENT
2 AS TO JAMES L. ERICKSTEEN (the "FINAL JUDGMENT"), permanently restraining and
3 enjoining him from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15
4 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15
5 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder;
6 and ordering ERICKSTEEN to disgorge \$2,815,166 representing \$2,082,000 in profits realized and
7 \$733,166 in prejudgment interest, and it further appearing that this Court has jurisdiction over
8 ERICKSTEEN and the subject matter hereof, and the Court being fully advised in the premises:

9 **I.**

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that ERICKSTEEN, his
11 agents, employees, servants, attorneys-in-fact, and all those persons in active concert or
12 participation with them who receive actual notice of this FINAL JUDGMENT by personal service
13 or otherwise, and each of them, be and they hereby are permanently enjoined and restrained from
14 violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], by, directly or indirectly, using
15 any means or instrumentality of transportation or communication in interstate commerce, or the
16 mails, in the offer or sale of any security:

- 17 (a) to employ any device, scheme or artifice to defraud; or
18 (b) to obtain money or property by means of any untrue statement of a
19 material fact or any omission to state a material fact necessary in
20 order to make the statements made, in the light of the circumstances
21 under which they are made, not misleading; or
22 (c) to engage in any transaction, practice, or course of business which
23 operates or would operate as a fraud or deceit upon the purchaser.

24 **II.**

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that ERICKSTEEN, his
26 agents, servants, employees, attorneys-in-fact, and all those persons in active concert or
27 participation with them who receive actual notice of this FINAL JUDGMENT by personal service
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1 or otherwise, and each of them, be and they hereby are permanently enjoined and restrained from
2 violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. §
3 240.10b-5] thereunder, by, directly or indirectly, using any means or instrumentality of interstate
4 commerce, or of the mails, or of any facility of any national securities exchange:

- 5 (1) to employ any device, scheme or artifice to defraud;
- 6 (2) to make any untrue statement of a material fact or to omit to state a material fact
7 necessary in order to make the statements made, in light of the circumstances under
8 which they were made, not misleading; or
- 9 (3) to engage in any act, practice, or course of business which operates or would operate
10 as a fraud or deceit upon any person,

11 in connection with the purchase or sale of any security.

12 **III.**

13 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that ERICKSTEEN
14 shall pay disgorgement in the amount of \$2,082,000, representing his gains from the conduct
15 alleged in the COMPLAINT, plus prejudgment interest of \$733,166, for a total disgorgement
16 obligation of \$2,815,166; provided however that based upon ERICKSTEEN's sworn
17 representations in his Statement of Financial Condition dated July 7, 1998 and supporting
18 documentation, which was submitted to the COMMISSION, \$2,715,166 of this disgorgement
19 obligation is waived, contingent upon the accuracy and completeness of his Statement of Financial
20 Condition. ERICKSTEEN's remaining \$100,000 disgorgement obligation shall be paid as follows:
21 \$10,000 within 30 days of the entry of the FINAL JUDGMENT; another \$25,000 plus post-
22 judgment interest calculated at the statutory rate set forth in 28 U.S.C. § 1961 within 4 months
23 of the entry of the FINAL JUDGMENT; another \$25,000 plus post-judgment interest within 8
24 months of the entry of the FINAL JUDGMENT; another \$25,000 plus post-judgment interest
25 within 12 months of the entry of the FINAL JUDGMENT; and the balance of \$15,000 plus
26 post-judgment interest within 16 months of the entry of the FINAL JUDGMENT. Each
27 payment shall: (i) be made by postal money order, certified check, or cashier's check, made payable
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1 to "Clerk, U.S. District Court for the Southern District of California"; (ii) bear on its face the
2 caption "SEC v. FERRACONE, et al."; (iii) be transmitted by certified mail (return receipt
3 requested) to Financial, U.S. District Court for the Southern District of California, 880 Front Street,
4 Room 4290, San Diego, California 92101-8900; and (iv) be made under cover of a letter that
5 identifies the defendant, the name and case number of this action, the name of this Court, and the
6 COMMISSION's file number (HO-2986). A copy of the cover letter and the check or money order
7 shall be transmitted simultaneously to counsel for the COMMISSION. If any payment required by
8 this paragraph is not received within fifteen days after the date on which such payment is due,
9 defendant ERICKSTEEN's entire outstanding balance shall immediately become due and payable
10 and the COMMISSION may, at its sole discretion and without further notice to defendant
11 ERICKSTEEN, petition the Court for an order requiring the immediate payment of such
12 outstanding balance by defendant ERICKSTEEN. In connection with any such petition, the only
13 issue shall be whether defendant ERICKSTEEN's payment was made within fifteen days after it
14 was due, and defendant ERICKSTEEN may not, by way of defense to such petition, challenge the
15 validity of the CONSENT or this FINAL JUDGMENT. In any such petition, the COMMISSION
16 may move the Court to consider all available remedies, including, but not limited to, ordering
17 defendant ERICKSTEEN to pay funds or assets, directing the forfeiture of any assets, or imposing
18 sanctions for contempt of this Court's FINAL JUDGMENT, and the COMMISSION may also
19 request additional discovery.

20 IV.

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Clerk shall place
22 all such funds received into the Registry of the Court in an interest-bearing passbook account. The
23 total amount of funds to be invested will be \$100,000 plus post-judgment interest, which total shall
24 be paid by ERICKSTEEN according to the payment schedule set forth in Paragraph III of this
25 FINAL JUDGMENT. The clerk shall begin placing the funds into the interest bearing passbook
26 account upon receipt of the first payment, which is due within thirty days of the entry of this
27 FINAL JUDGMENT, and shall continue to place the funds received into the account until such
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1 also request additional discovery. ERICKSTEEN may not, by way of defense to such petition,
2 challenge the validity of his CONSENT or this FINAL JUDGMENT, contest the allegations in the
3 COMPLAINT, or assert that payment of a civil penalty should not be ordered.

4 VI.

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

8 VII.

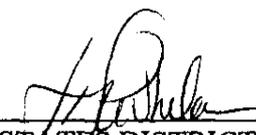
9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in accordance with
10 the provisions of 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73, United States
11 Magistrate Judge Houston may conduct any proceedings necessary regarding the collection of the
12 monies Defendant ERICKSTEEN is required to disgorge under this FINAL JUDGMENT. United
13 States District Judge Whelan shall retain jurisdiction over the enforcement of all other terms of this
14 FINAL JUDGMENT.

15 VIII.

16 IT IS FURTHER ORDERED that counsel presenting this order personally serve a copy
17 thereof on the clerk or the chief deputy. Absent the aforesaid service, the clerk is hereby relieved of
18 any personal liability relative to compliance with this order.

19 IX.

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

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24 
25 UNITED STATES DISTRICT JUDGE
26 THOMAS J. WHELAN

27 DATED: 12/21/98
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1 time as the Court directs that all of the funds be disbursed. The clerk shall deduct ten percent
2 (10%) from the income earned on the investment as authorized by the Judicial Conference of the
3 United States and set by the Director of the Administrative Office, whenever such income becomes
4 available for deduction in the investment and without further order of the Court. After such time as
5 said monies are paid into the Court, the COMMISSION may propose a plan of distribution of the
6 disgorged monies, which plan shall be subject to Court approval, or may request that the monies be
7 paid to the United States Treasury.

8 **V.**

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that based upon
10 ERICKSTEEN's sworn representations to the COMMISSION in his Statement of Financial
11 Condition dated July 7, 1998, and submitted to the Commission, the Court is not ordering
12 ERICKSTEEN to pay a civil penalty pursuant to Section 20(d) of the Securities Act of 1933 [15
13 U.S.C. § 77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C.
14 § 78u(d)(3)]. The determination not to impose a civil penalty is contingent upon the accuracy and
15 completeness of ERICKSTEEN's Statement of Financial Condition. *If at any time following entry*
16 *of this FINAL JUDGMENT, the COMMISSION obtains information indicating that*
17 *ERICKSTEEN's representations to the COMMISSION concerning his assets, income, liabilities,*
18 *or net worth were fraudulent, misleading, inaccurate or incomplete in any material respect as of the*
19 *time such representations were made, the COMMISSION may, at its sole discretion and without*
20 *prior notice to ERICKSTEEN, petition this Court for an order requiring ERICKSTEEN to pay his*
21 *entire disgorgement obligation of \$2,815,166 and imposing a civil penalty. In connection with any*
22 *such petition, the only issues shall be whether the financial information provided by ERICKSTEEN*
23 *was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such*
24 *representations were made, and the amount of the civil penalty to be imposed. In its petition, the*
25 *COMMISSION may move this Court to consider all available remedies, including, but not limited*
26 *to, ordering ERICKSTEEN to pay funds or assets, directing the forfeiture of any assets, or*
27 *imposing sanctions for contempt of this Court's FINAL JUDGMENT, and the COMMISSION may*
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