

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

OMNI INTERNATIONAL TRADING, INC.
DANIEL J. BUBALO,
JOHN C. HETHERINGTON,
MICHAEL A. WILCOX,
DANIEL L. KOEHLER,
BRIAN E. FARLEY and
SCOTT A. RUDE

Defendants.

CIVIL ACTION
NO. 97-2116
(DSD/JMM)

JUDGE DOTY

MAGISTRATE JUDGE MASON

ORDER OF PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
MICHAEL A. WILCOX

Plaintiff United States Securities and Exchange Commission ("Commission"), having filed a Complaint for a Permanent Injunction and Other Equitable Relief ("Complaint") in this matter, and Defendant Michael A. Wilcox ("Wilcox"), in his Consent and Stipulation attached hereto and incorporated herein ("Consent"), having acknowledged receipt of the Complaint and admitted the personal jurisdiction of this Court over him and over the subject matter hereof, and both the Commission and Wilcox having waived the entry of Findings of Fact and Conclusions of Law as provided by Rule 52 of the Federal Rules of Civil Procedure, and Wilcox, without admitting or denying the allegations of the Complaint except as to

11-30-99
DEPUTY CLERK

jurisdiction, and without trial, argument, or adjudication of any issue of fact or law herein, having consented to the entry of this Order of Permanent Injunction and Other Equitable Relief (“Order”), and it further appearing that the Court has jurisdiction over the parties and the subject matter hereof, and the Court being fully advised in the premises:

I.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Wilcox, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, in the offer or sale of any securities:

- (1) employing any device, scheme or artifice to defraud;
 - (2) obtaining money or property by means of any untrue statement of material fact or any omission 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
 - (3) engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser of such securities,
- in violation of Sections 17(a)(1), (2) or (3) of the Securities Act [15 U.S.C. §§77q(a)(1), (2) or (3)].

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Wilcox, his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, 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, in connection with the purchase or sale of any security:

- (1) employing any device, scheme or artifice to defraud;
- (2) making any untrue statement of material fact or any omission 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
- (3) 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 Securities Exchange Act of 1934 (“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:

A. Wilcox shall pay disgorgement in the amount of \$286,516, representing his gains as alleged in the Complaint, plus pre-judgment interest in the amount of \$130,044 thereon, for a total payment of \$416,560. Based on Wilcox’s sworn representations in his

Statement of Financial Condition dated July 9, 1999, and submitted to the Commission, payment of all but \$80,000 of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of those sworn representations.

B. Wilcox shall pay the \$80,000 disgorgement as follows: (i) \$10,000 within ten calendar days of the entry of this Order; (ii) \$10,000 by December 31, 1999; (iii) \$20,000 by December 31, 2000; (iv) \$20,000 by December 31, 2001; and (v) \$20,000 by December 31, 2002.

C. Failure by Wilcox to deliver any payment required by this Order to the Registry of the Court on the date prescribed and in the exact amount due will, at the sole discretion of the Commission, render the entire remaining balance of the disgorgement amount immediately due and payable, and will constitute grounds for finding Wilcox in contempt of this Order.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all payments to be made by Wilcox according to this Order shall be made by depositing a cashier's check, certified check, or postal money order into the Registry of the Court for the United States District Court for the District of Minnesota. Notice of the deposit by copy of such check or money order and any receipt for same, or in such other form acceptable to the Commission, shall be provided to the Midwest Regional Office of the Commission within the time for such payment. The Clerk of the Registry of the Court shall deposit such funds into an interest bearing account and shall be entitled to assess a charge against interest income earned, at the rate established by the judicial conference of the United States and administered by the

Administrative Office of the United States Courts. The Commission may apply to the Court to distribute to investors any funds deposited into the Registry of the Court pursuant to this Order, if feasible, or to the United States Treasury.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT based on Wilcox's sworn representations in its Statement of Financial Condition dated July 9, 1999, and submitted to the Commission, the Court is not ordering Wilcox to pay a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act, as amended [15 U.S.C. §78u(d)(3)]. The determination not to impose a civil penalty and to waive all but \$80,000 of the disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of Wilcox's sworn representations to the Commission concerning his assets, income, liabilities, net worth and related issues in his Statement of Financial Condition dated July 9, 1999, and submitted to the Commission. If at any time following the entry of this Order the Commission obtains information indicating that those sworn representations to the Commission were fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations and statements were made, the Commission may, at its sole discretion and without prior notice to Wilcox, petition the Court for an order requiring Wilcox to pay the remaining unpaid portion of the entire disgorgement amount of \$206,516 plus pre-judgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Wilcox described above was fraudulent, misleading,

inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering Wilcox to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Order, and the Commission may also request additional discovery. Wilcox may not, by way of a defense to any such petition or any other Commission proceeding, including without limitation a proceeding to enforce the Order or any administrative proceeding based in whole or in part on the Order: challenge the validity of this Consent or the Order; contest any of the allegations in the Complaint; contest the entry of the order of disgorgement against him, the imposition of pre-judgment and post-judgment interest, or the amount of disgorgement so ordered or interest thereon; or contest the entry of an order requiring him to pay a civil penalty.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the attached Consent of Wilcox be, and hereby is, incorporated herein with the same force and effect as if fully set out herein.

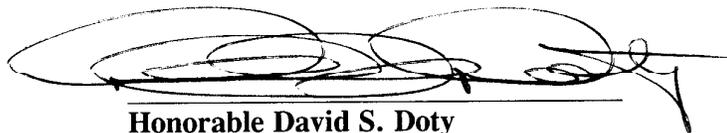
VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including enforcement of the Order of Permanent Injunction and Other Equitable Relief.

SO ORDERED:

A handwritten signature in black ink, appearing to read "David S. Doty", is written over a horizontal line. The signature is somewhat stylized and loops around the line.

Honorable David S. Doty
UNITED STATES DISTRICT JUDGE

Dated: November 30, 1999

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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SCOTT A. RUDE		:
		:
Defendants.		:
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CIVIL ACTION
NO. 97-2116
(DSD/JMM)

JUDGE DOTY

MAGISTRATE JUDGE MASON

CONSENT AND STIPULATION OF MICHAEL A. WILCOX

A. Defendant Michael A. Wilcox ("Wilcox") hereby:

1. Admits service of process in this action and admits the jurisdiction of the Court over him and the subject matter of this action;

2. Without admitting or denying the allegations of the Complaint, except as to personal jurisdiction, which is admitted, voluntarily consents to the entry of the attached Order of Permanent Injunction and Other Equitable Relief ("Order") without further notice.

3. Wilcox agrees and undertakes to disgorge \$286,516, representing his gains ^{as shown} ~~from~~ ~~the conduct~~ ^{TKD} alleged in the Complaint, plus pre-judgment interest in the amount of \$130,044 thereon, for a total payment of \$416,560. Based on Wilcox's sworn representations in his

Statement of Financial Condition dated July 9, 1999, and submitted to the Commission, payment of all but \$80,000 of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of those sworn representations.

4. Wilcox agrees and undertakes to pay the \$80,000 disgorgement as follows: (i) \$10,000 within ten calendar days of the entry of this Order; (ii) \$10,000 by December 31, 1999; (iii) \$20,000 by December 31, 2000; (iv) \$20,000 by December 31, 2001; and (v) \$20,000 by December 31, 2002.

5. Wilcox acknowledges that the Court is not imposing a civil penalty pursuant to Section 20(d) of the Securities Act of 1933 or Section 21(d)(3) of the Securities Exchange Act of 1934 or requiring full payment of disgorgement and pre-judgment interest thereon based upon the accuracy and completeness of Wilcox's sworn representations to the Commission concerning his assets, income, liabilities, and net worth, as described in his sworn Statement of Financial Condition dated July 9, 1999, and submitted to the Commission. Wilcox further consents that if at any time following the entry of the Order the Commission obtains information indicating that Wilcox's 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 Wilcox, petition the Court for an order requiring Wilcox to pay disgorgement of the remaining \$206,516, pre-judgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Wilcox was fraudulent, misleading, inaccurate or incomplete in any material respect

as of the time such representations were made, and the amount of civil penalty to be imposed. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering Wilcox to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Order, and the Commission may also request additional discovery. Wilcox may not, by way of defense to such petition, challenge the validity of this Consent or the Order, contest the allegations in the Complaint filed by the Commission, contest the amount of disgorgement and interest, or assert that disgorgement or payment of a civil penalty should not be ordered.

6. Acknowledges that he enters into this Consent voluntarily and that no tender, offer, promise, or threat of any kind whatsoever has been made by the Commission or any member, officer, employee, agent or representative of the Commission to induce him to enter into this Consent;

7. Understands that the terms of the Order are enforceable through contempt proceedings;

8. Agrees that the Order may be presented to the Court by the Commission for consideration and entry without further notice, waives service of the Order and agrees that the entry of the Order by the Court and its filing by the Clerk of the Court will constitute notice of its terms and conditions;

9. Waives any right he may have to appeal from the Order;

10. Agrees that he will not oppose enforcement of the Order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objections based thereon;

11. Wilcox 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, Wilcox 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, Wilcox hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If Wilcox breaches this agreement, the Commission may petition the Court to vacate the Order and restore this case to its active docket. Nothing in this provision affects Wilcox's testimonial obligations or right to take legal positions in litigation in which the Commission is not a party.

12. Acknowledges and agrees that this proceeding, the order of payment of disgorgement and prejudgment interest contemplated as part of the resolution thereof, the order of payment of a money penalty contemplated as part of the resolution thereof, and this Consent to the entry of the Order, are for the purpose of resolving this civil proceeding only, 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 him. Consistent with the provisions of 17 C.F.R. § 202.5(f), Wilcox waives any claim of Double Jeopardy based upon

the settlement of this proceeding, including the imposition of any remedy or civil penalty herein; and

13. Agrees that the Court shall retain jurisdiction of this matter for all purposes.

B. The Commission and Wilcox waive entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

C. The Commission and Wilcox agree that this Consent shall be made a part of the Order as if fully set forth therein.

Respectfully Submitted,



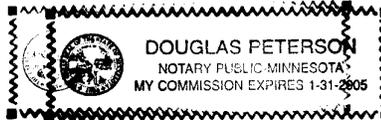
Michael A. Wilcox

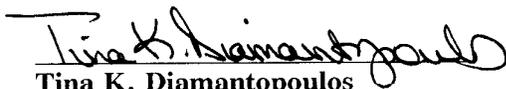
Subscribed to and
sworn to before me this 5th
day of Oct, 1999



Notary Public

Dated: October 5, 1999





Tina K. Diamantopoulos
One of the attorneys for Plaintiff
Securities and Exchange Commission
500 West Madison Street
Suite 1400
Chicago, IL 60661
(312) 353-7390

Dated: November 26, 1999