

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff,

v.

98 Civ. 2298 (GK)

BIO-TECH INDUSTRIES, INC., ET AL.,

Defendants.

**FILED**

**FEB 28 2000**

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

**FINAL JUDGMENT AS TO MICHAEL DAVIS**

Plaintiff Securities and Exchange Commission ("Commission"), having filed a Complaint, and defendant Michael Davis ("Davis"), in his Consent and Undertakings ("Consent"), filed herewith, having entered a general appearance, having acknowledged receipt of the Complaint, having admitted the jurisdiction of the Court over him and 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, solely for the purpose of this action, without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction), having consented to the entry of this Final Judgment as to Michael Davis ("Final Judgment"); and it appearing that this Court has jurisdiction over Davis and the subject matter hereof, and the Court being fully advised in the premises, **IT IS HEREBY:**

**I.**

**ORDERED, ADJUDGED AND DECREED** that Davis and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and

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each of 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 17(a) of the Securities Act [15 U.S.C. § 77q(a)] by,

in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly --

- (1) employing any device, scheme, or artifice to defraud; or
- (2) 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 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.

## II.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Davis and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of 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 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], 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,

(1) employing any device, scheme, or artifice to defraud;

(2) 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

(3) 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.

### III.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Davis and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of 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 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1 or 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 or 240.13a-13], by:

(a) while directly or indirectly controlling an issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], unless the controlling person is acting in good faith and is not directly or indirectly inducing the act or acts constituting the violation or cause of action, pursuant to

Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], failing to file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security --

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 [15 U.S.C. § 78l] except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962;

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe [as required by Rules 13a-1 and 13a-13]; or

(b) failing to, in addition to the information expressly required to be included in a statement or report, add such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading [as required by Rule 12b-20].

#### IV.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Davis is, for the period of five (5) years from the entry of this Final Judgment, prohibited from acting as an officer or

director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

**V.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that Davis pay disgorgement in the amount of \$18,535, representing his gains from the conduct alleged in the Complaint, plus pre-judgment interest thereon in the amount of \$4,701. Based upon Davis' sworn representations in his Statement of Financial Condition dated November 24, 1999, and submitted to the Commission, payment of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of his Statement of Financial Condition.

**VI.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that based upon Davis' sworn representations in his Statement of Financial Condition dated November 24, 1999, and submitted to the Commission, the Court is not ordering him to pay a civil penalty pursuant to Section 20(d) of the Securities Act or Section 21(d)(3) of the Exchange Act. The determination not to impose a civil penalty and to waive payment of the disgorgement and pre-judgment interest thereon 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 Davis' 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 Davis, petition this Court for an order requiring Davis to pay disgorgement, 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 Davis 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 its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Davis to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Davis may not, by way of defense to such petition, challenge the validity of his Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission, contest the amount of disgorgement and interest, or assert that disgorgement or the payment of a civil penalty should not be ordered.

## VII.

**FURTHER ORDERED, ADJUDGED AND DECREED** that Davis and his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them, and each of them, who receive actual notice of this Final Judgment by personal service or otherwise, are permanently enjoined for a period of three years from the date of this Final Judgment from destroying, mutilating, concealing, altering, or disposing of any items, including, but not limited to, any books, records, documents, contracts, agreements, assignments, obligations, tape recordings, computer media or other property, relating to the activities described in the Complaint.

**VIII.**

**FURTHER ORDERED, ADJUDGED AND DECREED** that Davis shall comply with the Consent which accompanies this Final Judgment and which is incorporated herein with the same force as if fully set forth in this Final Judgment.

**IX.**

There being no just reason for delay, 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.

**IT IS SO ORDERED.**

  
UNITED STATES DISTRICT JUDGE

Dated: Feb. 28, 2000  
Washington, D.C.

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