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★ FEB 24 2005 ★

LONG ISLAND OFFICE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against-

SYMBOL TECHNOLOGIES, INC., et al.,

Defendants.
-----X

04 Civ. 2276 (LDW)

Courtesy Copy

The original was:

_____ Filed in hard copy.

_____ Electronically filed.

**PARTIAL FINAL CONSENT JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO DEFENDANT BRIAN BURKE**

Plaintiff Securities and Exchange Commission ("Commission") having filed a complaint ("Complaint") charging defendant Brian Burke ("Burke") with violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2] and charging that defendant Burke is liable as a controlling person, pursuant to § 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], for the violations by Symbol Technologies, Inc. ("Symbol") of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)], and Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13], and defendant Burke having executed the Consent of Defendant Brian Burke ("Consent"), dated February ____, 2005, annexed hereto and incorporated herein, having acknowledged service of the summons and Complaint, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having admitted to the jurisdiction

of this Court over him and over the subject matter of this action and, without admitting or denying the allegations contained in the Complaint, except as to jurisdiction, which are admitted, and having consented to the entry of this Partial Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Brian Burke (“Partial Judgment”) without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Burke is permanently enjoined and restrained from, directly or indirectly, in 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 material fact or any omission 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 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 HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Burke is permanently restrained and enjoined from, directly or indirectly, in connection with the purchase

or sale of any security, by the 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 the 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 [17 C.F.R. § 240.10b-5].

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Burke is permanently restrained and enjoined from, directly or indirectly, singly or in concert:

- (A) knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]; or
- (B) falsifying, or causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], in violation of Rule 13b2-1 [17 C.F.R. § 240.13b2-1]; or
- (C) making, or causing to be made, a materially false or misleading statement, or omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under

which such statements were made, not misleading to an accountant in connection with (i) any audit or examination of the financial statements of an issuer or (ii) the preparation or filing by an issuer of any document or report required to be filed with the Commission, in violation of Rule 13b2-2 [17 C.F.R. § 240.13b2-1].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Burke is permanently restrained and enjoined from, directly or indirectly, controlling any person who:

- (A) fails 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) files 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)], Rules 12b-20, 13a-1 or 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 or 240.13a-13], unless defendant Burke acts in good faith and does not directly or indirectly induce the act or acts constituting the violations.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Burke is permanently restrained and enjoined from, directly or indirectly, controlling any person who:

- (A) fails to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of an issuer; or
- (B) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that
 - (1) transactions are executed in accordance with management's general or specific authorization;
 - (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles, or any other criteria applicable to such statements, and to maintain accountability for assets;
 - (3) access to assets is permitted only in accordance with management's general or specific authorization; and
 - (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences,

in violation of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)], unless defendant Burke acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Burke shall pay disgorgement of ill-gotten gains, if any, and prejudgment interest on any such disgorgement, in an amount, and upon such terms, as may be determined by the Court at a hearing to be held, upon motion of the Commission. The disgorgement of ill-gotten gains, if any, and prejudgment interest, if any, to be paid by defendant Burke shall be determined by the Court in light of all the relevant facts and circumstances following a hearing. At that hearing, the issues will be limited to determining the appropriateness and amount of ill-gotten gains to be disgorged and prejudgment interest. At that hearing defendant Burke will be precluded from arguing that he did not violate the federal securities laws in the manner described in the Complaint herein or any amended complaint, and, solely for the purposes of such hearing, the allegations of the Complaint or any amended complaint shall be accepted as and deemed true by the Court. The Court may determine whether to impose a disgorgement obligation and payment of interest, and the amount of any such disgorgement and interest, on the basis of affidavits, declarations, deposition excerpts and exhibits, or any other information deemed appropriate by the Court. Defendant Burke may not, at the hearing, challenge the validity of his Consent or the Partial Judgment.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Burke shall pay civil penalties, if any, if so ordered by the Court pursuant to the provisions of Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and of Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], in an amount, and upon such terms, as may be determined by the Court at a hearing to be held, upon motion of the Commission. The amount of the civil penalty, if any, to

be paid by defendant Burke pursuant to the provisions of Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], shall be determined by the Court in light of all the relevant facts and circumstances, following a hearing. At that hearing, the issues will be limited to determining the appropriateness and amount of any such civil penalty. At that hearing, defendant Burke will be precluded from arguing that he did not violate the federal securities laws in the manner described in the Complaint herein or any amended complaint and, solely for the purposes of such hearing, the allegations of the Complaint or any amended complaint shall be accepted as and deemed true by the Court. The Court may determine whether to impose a penalty, and the amount of any such penalty, on the basis of affidavits, declarations, deposition excerpts, and exhibits, or any other information deemed appropriate by the Court. Defendant Burke may not, at the hearing, challenge the validity of his Consent or this Partial Judgment.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], defendant Burke is 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)].

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Partial Judgment shall be binding upon defendant Burke, his agents, servants, employees and attorneys, and upon those persons in active

concert or participation with him who receive actual notice of this Partial Judgment by personal service or otherwise.

X.

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

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Partial Judgment.

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just reason for delay, the Clerk of this Court is hereby directed to enter this Partial Judgment forthwith pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

CONSENT OF DEFENDANT BRIAN BURKE

1. Defendant Brian Burke (“Burke”), being fully apprised of his rights, having had the opportunity to confer with legal counsel, having read and understood the terms of the annexed Partial Final Consent Judgment Of Permanent Injunction And Other Relief As To Defendant Brian Burke (“Partial 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 further notice, trial or argument, and without admitting or denying the allegations of the Complaint filed by plaintiff Securities and Exchange Commission (“Commission”), except as to jurisdiction, which are admitted, hereby consents to the entry of the annexed Partial Judgment.

2. Defendant Burke agrees that this Consent Of Defendant Brian Burke (“Consent”) shall be incorporated by reference in and made part of the Partial Judgment to be presented to the Court for signature, filing and entry contemporaneously herewith.

3. Defendant Burke waives any right he may have to appeal from the Partial Judgment.

4. Defendant Burke acknowledges that any willful violation of any of the terms of the Partial Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions.

5. Defendant Burke acknowledges that he enters into this Consent voluntarily, and that this Consent and the Partial Judgment embody the entire understanding of himself and the Commission. Defendant Burke acknowledges and agrees that this proceeding, and his Consent to the entry of the Partial Judgment, are for the purposes of resolving this civil action only, and

that no tender, offer, promise, threat or representation of any kind has been made by the Commission or any member, officer, attorney, agent or representative thereof with regard to: (a) any criminal liability arising from the facts underlying this action; or (b) immunity from any such criminal liability.

6. Defendant Burke acknowledges that he has been informed and understands that the Commission, at its sole and exclusive discretion, may refer, or grant access to, this matter or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction, if the Commission has not already done so.

7. Defendant Burke acknowledges that, in conformity with the provisions of 17 C.F.R. § 202.5(f), his Consent and the entry of the annexed Partial Judgment do not resolve, affect or preclude any other proceeding that has been or may be brought against him or anyone else. Among other things, defendant Burke 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 sought or consented to in this civil action, including the seeking or imposition of any remedy or civil penalty herein, bars any criminal action, or that any criminal action bars the relief consented to in this action.

8. Defendant Burke acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization.

This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding.

9. Defendant Burke 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 allegation in the Complaint or order for proceedings," 17 C.F.R. § 202.5(e). In compliance with this policy, defendant Burke 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 Burke hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If defendant Burke breaches this agreement, the Commission may petition the Court to vacate the Partial Judgment and restore this action to its active docket. Nothing in this provision affects defendant Burke's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings in which the Commission is not a party.

10. Defendant Burke understands and agrees that the amounts, if any, of the civil penalty, disgorgement obligation and prejudgment interest to be paid by defendant Burke will be determined by the Court upon motion of the Commission or at the instance of the Court, in light of all the relevant facts and circumstances at a hearing at which the issues will be limited to determining the appropriateness and the amounts of any such penalty, disgorgement obligation and prejudgment interest. Defendant Burke understands and agrees that at such hearing, he will be precluded from arguing that he did not violate the federal securities laws in the manner described in the Complaint herein or any amended complaint, and that, solely for the purposes of such hearing, the allegations in the Complaint or any amended complaint shall be accepted as

and deemed true by the Court. Defendant Burke understands and agrees that the Court may determine whether to impose a penalty, disgorgement obligation and prejudgment interest, and the amounts of any such penalty, disgorgement obligation and prejudgment interest on the basis of affidavits, declarations, deposition excerpts and exhibits, or any other information deemed appropriate by the Court. Defendant Burke may not at the hearing, challenge the validity of this Consent or the Partial Judgment.

11. Defendant Burke agrees that this Court shall retain jurisdiction of this matter for purposes of implementing and enforcing the terms and conditions of the Partial Judgment and for all other purposes.

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

13. Defendant Burke will not oppose the enforcement of the Partial Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

14. Defendant Burke waives service of the Partial Judgment and agrees that entry of the Partial Judgment by the Court and filing with the Clerk of the Court will constitute notice to defendant Burke of its terms and conditions. Defendant Burke agrees to execute and provide to the Commission a written declaration pursuant to 28 U.S.C. § 1746 acknowledging his receipt of the Partial Judgment no later than ten (10) business days after a copy of the Partial Judgment has been forwarded to defendant Burke's counsel, Andrew M. Lawler, Esq., 641 Lexington Avenue, 27th Floor, New York, NY 10022.

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

16. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, defendant Burke (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints his counsel, Andrew M. Lawler, Esq., as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local

rules, provided that the party requesting the testimony reimburses defendant Burke's travel, lodging, and subsistence expenses at the then prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over him in any United States District Court for purposes of enforcing any such subpoena.

Dated: Northport, New York
Feb 14, 2005

Brian Burke
Brian Burke

On this 14 day of February, 2005, before me personally appeared Brian Burke to me known to be the person who executed the foregoing Consent of Defendant Brian Burke.

Joseph V. DiBlasi
Notary Public

JOSEPH V. DIBLASI
NOTARY PUBLIC, State of New York
No. 4738726

Qualified in Suffolk County
Commission Expires Oct. 31, 2005

State of _____
Commission No. _____
My commission expires on _____.

SO ORDERED:

Central Islip, New York
2/24, 2005

UNITED STATES DISTRICT JUDGE