01F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
- against-	
SYMBOL TECHNOLOGIES, INC., et al.,	**04 Civ. 2276 (SJF)**
Defendants.	

PARTIAL FINAL CONSENT JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AS TO DEFENDANT ROBERT DONLON

Plaintiff Securities and Exchange Commission ("Commission") having filed a complaint ("Complaint") charging defendant Robert Donlon ("Donlon") with violating 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 and 13b2-1 [17 C.F.R. §§ 240.10b-5, 240.13b2-1] and with aiding and abetting violations by Symbol Technologies, Inc. of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)] and Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13] and defendant Donlon having executed the Consent of Defendant Robert Donlon ("Consent"), 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 Robert Donlon ("Partial Judgment") without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Donlon 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].

II.

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

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Donlon is permanently restrained and enjoined from aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] or Rules 12b-20, 13a-1 or 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 or 240.13a-13] by knowingly providing substantial assistance to an issuer that:

(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.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Donlon is permanently restrained and enjoined from aiding and abetting violations of Section 13(b)(2) of

the Exchange Act [15 U.S.C. § 78m(b)(2)] by knowingly providing substantial assistance to an issuer that:

(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.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon motion of the Commission, the Court shall determine whether to order defendant Donlon to disgorge ill-gotten gains and/or pay a civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the Court shall determine the amounts of disgorgement

and/or civil penalty. If disgorgement is ordered, defendant Donlon shall pay prejudgment interest on the disgorgement amount at the rate of interest used by the Internal Revenue Service for underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with any motion by the Commission for disgorgement and/or civil penalties, and at any oral argument held on such a motion: (a) defendant Donlon will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) defendant Donlon may not challenge the validity of the Consent or this Partial Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint that specifically pertain to defendant Donlon's violative conduct shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure and without conducting an evidentiary hearing.

VI.

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 Donlon, 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.

VII.

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.

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VIII.

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.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Partial Judgment forthwith and without further notice.

CONSENT OF DEFENDANT ROBERT DONLON

1. Defendant Robert Donlon ("Donlon"), 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 Robert Donlon ("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 Donlon agrees that this Consent Of Defendant Robert Donlon ("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 Donlon waives the right, if any, to a jury trial and to appeal from the Partial Judgment.

4. Defendant Donlon acknowledges that any 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 Donlon 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 Donlon 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

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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 Donlon 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 Donlon 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 Donlon 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 Donlon 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.

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

9. Defendant Donlon 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 Donlon 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 Donlon hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint. If defendant Donlon 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 Donlon'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 Donlon 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.

11. Defendant Donlon 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.

12. Defendant Donlon 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.

13. Defendant Donlon 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 Donlon of its terms and conditions. Defendant Donlon 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 Donlon's counsel, Gordon Mehler, 747 Third Avenue, 32nd Floor, New York, New York 10017.

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

15. Defendant Donlon agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that defendant Donlon pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant Donlon further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that defendant Donlon pays pursuant to the Final Judgment, regardless of whether such penalty

amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

Dated: 12/7, 2007

Robert Donlon

On 12/7, 2007, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires: October 11, 2010

SO ORDERED:

UNITED STATES DISTRICT JUDGE
1/18/2007

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
EDWARD J. SMICHOWSKI, Notary Public
Moosic Boro., Lackawanna County
My Commission Expires October 11, 2010