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FILED
CLERK, U.S. DISTRICT COURT
DEC 15 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
DEC 16 2004
CENTRAL DISTRICT OF CALIFORNIA
BY RG DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ALLAN BOREN, ERIC CANO, PHILIP
BORINI, CORRINE DAVIES and
TIMOTHY TUTTLE,

Defendants.

Case No. CV 01-04377 PA (Ex)
AMENDED JUDGMENT

Plaintiff Securities and Exchange Commission ("Commission") commenced this action by filing a complaint (the "Complaint"), charging defendant Allan Boren ("Boren") with violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)], Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§78j(b), 78m(b)(5)], and Rules 10b-5 and 13b2-1 [17 C.F.R. 240.10b-5, 240.13b2-1], and, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)], with aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B),] and Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. 240.12b-20, 240.13a-1, 240.13a-13].

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1 On August 21, 2003, the Court granted in part and denied in part the Commission's
2 Motion for Summary Judgment as to Boren. After evidentiary motions and trial, the Court
3 issued a ruling dated October 8, 2004 resolving all remaining issues.

4 On the basis of these rulings, the evidence properly before the Court, the papers and
5 files in this action, the arguments of counsel and for good cause appearing:

6 I.

7 IT IS ORDERED, ADJUDGED AND DECREED that Boren be and hereby is
8 permanently enjoined and restrained, directly or indirectly, singly or in concert, in
9 connection with the purchase or sale of any security, by the use of any means or
10 instrumentality of interstate commerce, or of the mails, or any facility of any national
11 securities exchange, from:

- 12 1. employing any device, scheme or artifice to defraud;
- 13 2. making any untrue statement of material fact or omitting to state a material
14 fact necessary in order to make the statements made, in light of the
15 circumstances under which they were made, not misleading; or
- 16 3. engaging in any act, practice or course of business which operates or would
17 operate as a fraud or deceit upon any person,

18 in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5
19 thereunder [17 C.F.R. 240.10b-5].

20 II.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Boren be and
22 hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, in
23 the offer or sale of any security, by the use of any means or instruments of transportation or
24 communication in interstate commerce, or by the use of the mails, from

- 25 1. employing any device, scheme or artifice to defraud; or
- 26 2. obtaining money or property by means of any untrue statement of a material
27 fact or any omission to state a material fact necessary in order to make the

SCANNED

1 statements made, in light of the circumstances under which they were made,
2 not misleading; or
3 3. engaging in any transaction, practice, or course of business which operates or
4 would operate as a fraud or deceit upon the purchaser,
5 in violation of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

6 III.

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Boren be and
8 hereby is permanently enjoined and restrained from aiding and abetting any violation of
9 Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)], or Rules 12b-20, 13a-1 and 13a-13
10 [17 C.F.R. 240.12b-20, 240.13a-1 and 240.13a-13], directly or indirectly, singly or in
11 concert, knowingly providing substantial assistance to an issuer that:

- 12 1. fails to file with the Commission any report required to be filed with the
13 Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C.
14 §78m(a)] and the rules and regulations promulgated thereunder; or
15 2. files with the Commission a report required to be filed with the Commission
16 pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and the
17 rules and regulations promulgated thereunder that (1) contains an untrue
18 statement of material fact; (2) fails to include, in addition to the information
19 required to be stated in such report, such further material information as may
20 be necessary to make the required statements, in light of the circumstances
21 under which they are made, not misleading; or (3) fails to disclose any
22 information required to be disclosed therein.

23 IV.

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Boren be and
25 hereby is permanently enjoined and restrained from aiding and abetting, directly or
26 indirectly, singly or in concert, any violation of Section 13(b)(2)(A) of the Exchange Act [15
27 U.S.C. §78m(b)(2)(A)] or Section 13(b)(2)(B) of the Exchange Act [15 U.S.C.
28 §78m(b)(2)(B)] by knowingly providing substantial assistance to an issuer that:

SCANNED

- 1 1. fails to make and keep books, records and accounts as required by, and in
2 accordance with, Section 13(b)(2)(A) of the Exchange Act [15 U.S.C.
3 §78m(b)(2)(A)]; or
- 4 2. fails to devise and maintain a system of internal accounting controls as
5 required by, and in accordance with, Section 13(b)(2)(B) of the Exchange Act
6 [15 U.S.C. §78m(b)(2)(B)].

7 V.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Boren be and
9 hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert,
10 from (1) knowingly circumventing or knowingly failing to implement a system of internal
11 accounting controls in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. §
12 78m(b)(5)], and (2) knowingly falsifying any book, record or account described in Section
13 13(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)] in violation of Rule 13b2-1 thereunder
14 [17 C.F.R. 240.13b2-1].

15 VI.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Boren shall pay
17 disgorgement in the amount of \$9,916,000, representing the ill-gotten gain as a result of the
18 conduct alleged in the Complaint, together with the pre-judgment interest thereon in the
19 amount of \$8,409,094 (calculated for the period of April 1, 1996 through September 30,
20 2004). The payment, made payable to the Securities and Exchange Commission, shall be
21 delivered or mailed, within ten (10) days of the date of entry of this Judgment, to the Office
22 of Financial Management, Securities and Exchange Commission, Operations Center, 6432
23 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied
24 by a letter identifying Boren as the defendant on whose behalf the payment is being made,
25 the caption and case number of this action, the name of this Court, and the Commission's
26 internal file number for this matter (NY-6358). Copies of such check or money order and
27 accompanying cover letter shall be simultaneously transmitted to William Currier, Northeast
28

1 Regional Office, United States Securities and Exchange Commission, 233 Broadway, New
2 York, NY 10279.

3 VII.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Boren shall pay a
5 civil penalty in the amount of \$600,000 (the maximum \$100,000 third tier statutory penalty
6 for each of Boren's six violations) pursuant to Section 20(d)(1) of the Securities Act of 1933
7 [15 U.S.C. §77t(d)(1)], and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].
8 The payment, made payable to the Securities and Exchange Commission, shall be delivered
9 or mailed, within ten (10) days of the date of entry of this Judgment, to the Office of
10 Financial Management, Securities and Exchange Commission, Operations Center, 6432
11 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied
12 by a letter identifying Boren as the defendant on whose behalf the payment is being made,
13 the caption and case number of this action, the name of this Court, and the Commission's
14 internal file number for this matter (NY-6358). Copies of such check or money order and
15 accompanying cover letter shall be simultaneously transmitted to William Currier, Northeast
16 Regional Office, United States Securities and Exchange Commission, 233 Broadway, New
17 York, NY 10279.

18 VIII.

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that commencing with
20 the entry of this Final Judgment, Boren is prohibited from acting as an officer or director of
21 any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act
22 [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the
23 Exchange Act [15 U.S.C. §78o(d)] pursuant to Section 21(d)(2) of the Exchange Act [15
24 U.S.C. §78u(d)(2)].

25 IX.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Rule
27 65(d) of the Federal Rules of Civil Procedure, this Final Judgment is binding upon Boren,
28 his agents, servants, employees, attorneys and any persons in active concert or participation

1 with him or them who receive actual notice of this Final Judgment by personal service or
2 otherwise.

3 X.

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

7 XI.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, there being no
9 just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment
10 forthwith pursuant to Rule 58 and Rule 79 of the Federal Rules of Civil Procedure.

11
12 DATED: December 15, 2004



13 Percy Anderson
14 UNITED STATES DISTRICT JUDGE

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