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CLERK, U.S. DISTRICT COURT
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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
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12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 THE HARTCOURT COMPANIES,
17 INC., ALAN V. PHAN, and
18 YONGZHI YANG,

19 Defendants.

NOTE CHANGES MADE BY THE COURT.
Case No. CV 03-3698 LGB (PLAx)

**[PROPOSED] AMENDED FINAL
JUDGMENT OF PERMANENT
INJUNCTION AND OTHER
RELIEF AGAINST DEFENDANT
ALAN V. PHAN**

NOTE CHANGES MADE BY THE COURT.

ENTERED
CLERK, U.S. DISTRICT COURT
FEB 28 2005
CENTRAL DISTRICT OF CALIFORNIA
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FEB 28 2005
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1 The parties having filed cross motions for summary judgment, the Court
2 having considered the various memoranda of points and authorities and all other
3 papers filed and the proceedings had herein, the Court issued an Order Granting
4 Plaintiff's Motion for Partial Summary Judgment; Denying Defendants' Motion
5 for Summary Judgment on December 14, 2004. On January 21, 2005, the Court
6 issued an Amended Order Granting Plaintiff's Motion for Partial Summary
7 Judgment; Denying Defendants' Motion for Summary Judgment ("Amended
8 Order"). The parties having agreed that the Amended Order resolves all claims
9 against all defendants, and the Court being fully advised in the premises and good
10 cause appearing therefor:

11 I.

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Alan V.
13 Phan ("Defendant") and Defendant's agents, servants, employees, attorneys, and
14 all persons in active concert or participation with them who receive actual notice
15 of this Final Judgment by personal service or otherwise are permanently restrained
16 and enjoined from violating, directly or indirectly, Section 10(b) of the Securities
17 Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5
18 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or
19 instrumentality of interstate commerce, or of the mails, or of any facility of any
20 national securities exchange, in connection with the purchase or sale of any
21 security:

- 22 (a) to employ any device, scheme, or artifice to defraud;
- 23 (b) to make any untrue statement of a material fact or to omit to
24 state a material fact necessary in order to make the statements
25 made, in the light of the circumstances under which they were
26 made, not misleading; or
- 27 (c) to engage in any act, practice, or course of business which
28 operates or would operate as a fraud or deceit upon any person.

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II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) & 77e(c), by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

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(b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Securities and Exchange Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

IV.

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 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).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$55,000 pursuant to 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). Defendant shall make this payment within ~~ten (10)~~ ^{thirty (30)} business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of

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1 Financial Management, Securities and Exchange Commission, Operations Center
2 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be
3 accompanied by a letter (with a copy to counsel for the Securities and Exchange
4 Commission) identifying Alan V. Phan as a defendant in this action; setting forth
5 the title and civil action number of this action and the name of this Court; and
6 specifying that payment is made pursuant to this Final Judgment. Defendant shall
7 pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. §
8 1961.

9 VI.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this
11 Court shall retain jurisdiction over this action for all purposes, including to
12 implement and enforce the terms of this Final Judgment and other orders and
13 decrees which may be entered, and to grant such other relief as this Court may
14 deem necessary and just.

15 VII.

16 There being no just reason for delay, the Clerk is ordered to enter this Final
17 Judgment forthwith and without further notice.

18
19 DATED: Feb. 24, 2005



HON. LOURDES G. BAIRD
UNITED STATES DISTRICT JUDGE

20
21
22 Presented by:

23 
24 _____
25 Nicholas S. Chung
Attorney for Plaintiff
Securities and Exchange Commission

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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On February 7, 2005, I served the document entitled **[PROPOSED] AMENDED FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST DEFENDANT ALAN V. PHAN** upon the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee.

FEDERAL EXPRESS BY AGREEMENT OF ALL PARTIES: By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

FAX (BY AGREEMENT ONLY): By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

(Federal) I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Date: February 7, 2005

Magnolia M. Marcelo
MAGNOLIA MARCELO

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SEC v. THE HARTCOURT COMPANIES, INC., et al.
United States District Court - Central District of California
Case No. CV 03-3698 LGB (PLAx)
(LA-2277)

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