

FEB 20 2002

U.S. District Court  
Deputy Clerk  
*[Signature]*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

J. DONALD NICHOLS,  
JEB L. HUGHES,  
C. SHELDON WHITTELSEY, IV,

Defendants.

Civil Action No.

1:02-CV-478

COMPLAINT FOR INJUNCTIVE RELIEF

It appears to Plaintiff, Securities and Exchange Commission ("Commission"), and it alleges, that:

OVERVIEW

1. This matter involves violations of the antifraud, periodic reporting, books and records, internal controls, and proxy provisions of the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act") by Defendant J. Donald Nichols ("Nichols"), a former chief executive officer and chairman of JDN Realty Corporation, Defendant Jeb L. Hughes ("Hughes"), a former vice president of a JDN Realty subsidiary, and Defendant C. Sheldon Whittelsey, IV, ("Whittelsey"), a former JDN Realty vice president. From the time of JDN Realty's initial public offering in 1994 through late

1999, Defendants Nichols, Hughes, and Whittelsey caused JDN Realty to unlawfully fail to disclose in its registration statements and other reports filed with the Commission, certain compensation paid to Hughes and Whittelsey. Hughes and Whittelsey received undisclosed compensation totaling approximately \$4.9 million.

### VIOLATIONS

2. Defendant Nichols has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations, or the aiding and abetting of violations, of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5) and 14(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), 78m(b)(5) and 78n(a)], and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1, 13b2-2, and 14a-9 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1, 240.13b2-2 and 240.14a-9].

3. Defendant Hughes has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations, or the aiding and abetting of violations, of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(a),

13(b)(2)(A), 13(b)(5) and 14(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(5) and 78n(a)], and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1 and 14a-9 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1 and 240.14a-9].

4. Defendant Whittelsey has engaged, and unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations, or the aiding and abetting of violations, of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(5) and 14(a) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(5) and 78n(a)], and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1 and 14a-9 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1 and 240.14a-9].

### JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, and other equitable relief.

6. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v], and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

7. Defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce, and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint that constituted violations of the Securities Act and Exchange Act.

8. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and Exchange Act occurred in the Northern District of Georgia. In

addition, Defendants Hughes and Whittelsey reside in the Northern District of Georgia.

9. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

#### THE DEFENDANTS

10. J. Donald Nichols, age 59, resides in Nashville, Tennessee. He served as chairman and chief executive officer of JDN Realty from December 1993 until his resignation as CEO on February 14, 2000 and as chairman in May 2000. Nichols was president and chairman of JDN Development Company, a subsidiary of JDN Realty, from December 1994 until his resignation on February 14, 2000.

11. Jeb L. Hughes, age 48, of Atlanta, Georgia, served as senior vice president for development of JDN Development from May 1998 until his resignation from that position on February 14, 2000. Hughes was self-employed and acted as a consultant to JDN Realty from January 1994 to May 1996. From May 1996 to May 1998, Hughes served as vice president for development of JDN Development. JDN Realty designated Hughes as an executive

officer for reporting purposes in May 1996, May 1997, May 1998, and May 1999.

12. C. Sheldon Whittelsey, IV, age 38, of Marietta, Georgia, served as vice president for development of JDN Realty from March 1994 until he resigned on February 14, 2000. He served as vice president of JDN Development Company, Inc., a subsidiary of JDN Realty, from May 1996 until his resignation on February 14, 2000. JDN Realty designated Whittelsey as an executive officer for reporting purposes in May 1994, May 1995, May 1996, May 1997, May 1998, and May 1999.

#### OTHER ENTITIES

13. JDN Realty Corporation, a Maryland corporation since 1993, has its principal place of business in Atlanta, Georgia. JDN Realty is listed on the New York Stock Exchange and is a reporting company pursuant to Section 12(a) of the Exchange Act.

14. JDN Development Company, Inc., a Delaware corporation, has been a subsidiary of JDN Realty since its formation in December 1994. From December 1994 until early 2001, JDN Realty owned 99% of the economic interest and 1% of the voting interest in JDN Development. Nichols owned the remaining 1% economic interest and 99% voting interest from December 1994 through April 2000. JDN

Realty conducts most of its development activities through JDN Development.

**UNDISCLOSED COMPENSATION AND RELATED-PARTY TRANSACTIONS**

15. Hughes and Whittelsey began their employment with JDN Realty's predecessor non-public company (the "Predecessor") prior to 1990. As part of their compensation at the Predecessor, Hughes and Whittelsey, in addition to their salaries, received interests in the Predecessor's real estate projects and fees associated with those particular projects.

16. Contemporaneous with the initial public offering of JDN Realty, Hughes became an independent consultant to JDN Realty and Whittelsey became an employee of JDN Realty. As a condition to their continued affiliation with JDN Realty, Hughes and Whittelsey requested that the prior compensation arrangement continue. Nichols agreed to continue the compensation arrangement. Nichols, Hughes and Whittelsey agreed to keep confidential the interests in real estate projects and the fees associated with the projects that comprised Hughes's and Whittelsey's compensation. JDN Realty's public filings only disclosed as compensation for Hughes and Whittelsey their salaries, bonuses, and stock benefits, which were approved by the board.

17. Because Nichols, Hughes and Whittelsey had kept confidential and failed to disclose the compensation arrangement, other officers, members of the board of directors, the accounting department, and the outside auditors of JDN Realty were unaware of the arrangement until late 1999, when employees of JDN Realty uncovered the compensation arrangement.

18. The compensation arrangement was effected by structuring certain real estate purchase transactions such that the third parties who sold land to JDN Development also disbursed cash or conveyed land to a Georgia corporation Hughes and Whittelsey owned. The effect of this compensation structure was the concealment of this information from JDN Realty's staff responsible for financial reporting.

19. In nine JDN Development Company real estate purchase transactions, the sellers of the land made cash disbursements totaling \$1,736,452 to the corporation owned by Hughes and Whittelsey. Nichols approved at least six of these transactions.

20. In ten JDN Development Company real estate purchase transactions, the sellers conveyed part of the real estate paid for by JDN Development Company to the corporation owned by Hughes and Whittelsey. In another transaction, the real estate was conveyed from the seller to JDN Development Company, and then



from JDN Development Company to Hughes and Whittelsey through their corporation pursuant to a deed signed by Nichols. These parcels had estimated fair market values totaling approximately \$2,800,101. Nichols approved all of these transactions.

21. Defendants Hughes and Whittelsey each owned significant interests in a partnership that purchased real property from JDN Realty for \$2 million in April 1996. In addition, Hughes and Whittelsey each owned a 25% interest in a company that sold over \$650,000 in surveying services to JDN Realty and JDN Development in a series of real estate transactions during the period from November 1996 through 1998.

22. Defendant Nichols held a 99% interest in a company that owned an airplane, which JDN Realty and JDN Development occasionally used. JDN Realty and JDN Development paid that company \$61,801 in 1996; \$238,246 in 1997; and \$285,522 in 1998.

23. JDN Realty annually provided its directors and officers with forms that required disclosure of their compensation, their material related-party transactions, and any false or misleading entries in or omissions from JDN Realty's books or records ("D&O Forms"). These forms stated that the information disclosed on them would be used by JDN Realty to prepare its proxy statements, annual reports, and registration statements filed with the

Commission. Nichols signed and returned these forms for the years 1994 through 1998 without disclosing that certain disbursements had been concealed on JDN Realty's books and records and without disclosing all JDN Realty transactions in which he held an interest. Whittelsey signed and returned these forms for the years 1994 through 1998 without disclosing all of the compensation he received from JDN Realty and JDN Development and without disclosing all JDN Realty transactions in which he held an interest. Hughes signed and returned these forms for the years 1996 through 1998 without disclosing all of the compensation he received from JDN Realty and JDN Development and without disclosing all JDN Realty transactions in which he held an interest.

JDN REALTY'S FALSE AND MISLEADING REPORTS,  
PROXY STATEMENTS, AND REGISTRATION STATEMENTS

24. JDN Realty failed to disclose accurately the compensation paid to Hughes and Whittelsey. The inaccurate compensation disclosures were included in, or incorporated by reference into, JDN Realty's annual reports, proxy statements, and registration statements. JDN Realty did not disclose 58.5%, 78.6% and 48.9% of Hughes's compensation in the years 1996, 1997 and 1998, respectively, because Defendants Nichols, Hughes, and Whittelsey kept confidential the compensation arrangement described above. JDN Realty did not disclose 61.7%, 79.7%, 57.4%, 81.6% and 53.5% of Whittelsey's compensation in the years 1994, 1995, 1996, 1997 and 1998, respectively, because Defendants Nichols, Hughes, and Whittelsey kept confidential the compensation arrangement described above.

25. JDN Realty's annual reports filed on Form 10-K for the years 1994 and 1995 failed to disclose accurately all compensation paid to Whittelsey and certain related-party transactions in which he held an interest. JDN Realty's annual reports filed on Form 10-K for the years 1996 through 1998 failed to disclose accurately all compensation paid to Hughes and Whittelsey and certain related-party transactions in which Nichols, Hughes, and Whittelsey held an interest.

26. JDN Realty's proxy statements filed on Schedule 14A on April 4, 1995 and April 7, 1996, failed to disclose accurately all compensation paid to Whittelsey and all transactions in which he held an interest. JDN Realty's proxy statements filed on Schedule 14A on March 28, 1997, April 3, 1998 and April 22, 1999, failed to disclose accurately all compensation paid to Hughes and Whittelsey and all transactions in which Nichols, Hughes, and Whittelsey held an interest.

27. JDN Realty failed to disclose related-party transactions involving Nichols, Hughes and Whittelsey because Nichols, Hughes and Whittelsey failed to disclose their participation in the transactions to the company.

28. JDN Realty's 1994, 1995, 1996 and 1997 audited annual financial statements and its unaudited financial statements for the quarters ended March 31, 1998 and December 31, 1998, were not prepared in conformity with generally accepted accounting principles ("GAAP") and were materially misstated because certain compensation paid to Hughes and Whittelsey was not accurately recorded on JDN Realty's books and records. The inaccurate financial statements were included in JDN Realty's filings on Form 10-K for the years 1994 through 1997 and on Form 10-Q for the quarters ended March 31, 1998 and December 31, 1998. The

inaccurate financial statements were also included in or incorporated by reference into JDN Realty's registration statements filed on Form S-3 on May 11, 1995, March 25, 1997 and October 23, 1997, and on a Form S-8 filed on August 31, 1998, and on prospectus supplements to those registration statements.

**NICHOLS MISLED OR OMITTED TO TELL JDN REALTY'S  
OUTSIDE ACCOUNTANTS MATERIAL FACTS OR STATEMENTS**

29. Nichols signed false or misleading management representation letters to JDN Realty's auditors relating to their audits of JDN Realty's financial statements for its years ended 1994 through 1998. In these management representation letters, Nichols falsely represented each year that 1) JDN Realty's financial statements were prepared in conformity with GAAP, 2) all material transactions were properly recorded in the accounting records underlying JDN Realty's financial statements, and 3) all related-party transactions were properly disclosed in the financial statements.

**JDN REALTY'S INACCURATE BOOKS, RECORDS, AND ACCOUNTS,  
AND INADEQUATE INTERNAL ACCOUNTING CONTROLS,  
AND RELATED VIOLATIONS BY DEFENDANT NICHOLS**

30. From 1994 through 1999, JDN Realty was required to make and keep books, records, and accounts, which in reasonable

detail, accurately and fairly reflected transactions and disposition of its assets.

31. During the years 1994 through 1999, JDN Realty's books and records did not accurately reflect the true nature of certain transactions because Defendants Nichols, Hughes, and Whittelsey failed to disclose information concerning the transactions to JDN Realty.

32. In addition, Defendant Nichols, singly or in concert with others, was responsible for devising and maintaining JDN Realty's internal accounting controls. Defendant Nichols failed to devise and implement JDN Realty internal accounting controls that were sufficient to provide reasonable assurances that: (a) transactions were executed in accordance with management's general or specific authorization, (b) transactions were recorded as necessary (i) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (ii) to maintain accountability for assets, (c) access to its assets was permitted only in accordance with management's general or specific authorization, and (d) the recorded accountability for its assets was compared with its existing assets at reasonable intervals and appropriate action was taken with respect to any differences. The lack of adequate

internal accounting controls resulted in false and misleading books and records and financial statements reported by JDN Realty in its filings with the Commission.

33. From 1994 through 1999, as described above, Nichols, singly or in concert with others, knowingly circumvented JDN Realty's internal accounting controls or knowingly failed to implement certain systems of internal accounting controls.

34. From 1996 through 1999, as described above, Hughes, singly or in concert with others, knowingly falsified certain of JDN Realty's books, records, or accounts by failing to disclose all compensation and related-party transactions on the D&O Forms.

35. From 1994 through 1999, as described above, Whittelsey, singly or in concert with others, knowingly falsified certain of JDN Realty's books, records, or accounts by failing to disclose all compensation and related party-transactions on the D&O Forms.

#### COUNT I

#### Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

36. Paragraphs 1 through 35 are hereby realleged and are incorporated herein by reference.

37. Defendants Nichols, Hughes and Whittelsey, from 1994 through 1999, singly or in concert, in connection with the offer or sale of securities, directly and indirectly, by the use of

means and instrumentalities of interstate commerce and by use of the mails:

- a. employed devices, schemes, and artifices to defraud;
- b. obtained money or property by means of untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- c. engaged in transactions, practices, and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the offer and sale of such securities,

all as more particularly described above.

38. Defendants Nichols, Hughes and Whittelsey knew, or were reckless in not knowing, that the statements and representations alleged herein were false and misleading because they failed to disclose the true nature of Hughes's and Whittelsey's compensation.

39. By reason of the foregoing, Defendants Nichols, Hughes and Whittelsey have violated, and unless restrained and enjoined,



will continue to violate Section 17(a) of the Securities Act [15 U.S.C. 77q(a)].

COUNT II

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

40. Paragraphs 1 through 35 are hereby realleged and are incorporated herein by reference.

41. Defendants Nichols, Hughes, and Whittelsey from 1994 through 1999, singly or in concert, in connection with the purchase and sale of securities, directly and indirectly, by the use of means and instrumentalities of interstate commerce and by use of the mails:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons, in connection with the purchase and sale of such securities,

all as more particularly described above.

42. Defendants Nichols, Hughes, and Whittelsey knew, or were reckless not knowing, that the statements and representations alleged herein were false and misleading because they failed to disclose the true nature of Hughes's and Whittelsey's compensation.

43. By reason of the foregoing, Defendants Nichols, Hughes and Whittelsey have violated, and unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### COUNT III

Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]

44. Paragraphs 1 through 35 are hereby realleged and are incorporated herein by reference.

45. As described above, the JDN Realty Forms 10-K for the years 1994 through 1998 failed to disclose accurately all compensation paid to Whittelsey, and the JDN Realty Forms 10-K for the years 1996 through 1998 failed to disclose accurately all compensation paid to Hughes. The JDN Realty Forms 10-K for the years 1994 through 1997 and Forms 10-Q for the quarters ended

March 31, 1998, and December 31, 1998, included inaccurate financial statements.

46. Defendants Nichols, Hughes and Whittelsey knew, or were reckless in not knowing, that JDN Realty's conduct was improper, and they provided knowing and substantial assistance to JDN Realty in reporting materially false and misleading information in its Forms 10-K for the years 1996 through 1998, and its Forms 10-Q for the quarters ended March 31, 1998, and December 31, 1998.

47. By reason of the foregoing, Defendants Nichols, Hughes and Whittelsey aided and abetted JDN Realty's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]. Defendants therefore are liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], and are likely to commit such violations in the future unless they are enjoined.

#### COUNT IV

Violations of Sections 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1]

48. Paragraphs 1 through 35 are hereby realleged and are incorporated herein by reference.

49. JDN Realty failed, as described above, to make and keep books, records, and accounts, which in reasonable detail accurately and fairly reflected transactions and dispositions of its assets. These failures were caused by Defendants Nichols, Hughes and Whittelsey not disclosing to others at JDN Realty certain compensation paid to Hughes and Whittelsey, as described above.

50. Defendants Nichols, Hughes, and Whittelsey knew, or were reckless in not knowing, that JDN Realty's conduct was improper, and they provided knowing and substantial assistance to JDN Realty in maintaining inaccurate books and records during 1996 through 1999

51. By reason of the foregoing, Defendants Nichols, Hughes, and Whittelsey aided and abetted JDN Realty's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1]. Defendants Nichols, Hughes and Whittelsey therefore are liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], and are likely to commit such violations in the future unless they are enjoined.

COUNT V

Violations of Sections 13(b) (2) (B) of the  
Exchange Act [15 U.S.C. § 78m(b) (2) (B)]

52. Paragraphs 1 through 35 are hereby realleged and are incorporated herein by reference.

53. JDN Realty failed, as described above, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (a) transactions were executed in accordance with management's general or specific authorization, (b) transactions were recorded as necessary (i) to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and (ii) to maintain accountability for assets, (c) access to its assets was permitted only in accordance with management's general or specific authorization, and (d) the recorded accountability for its assets was compared with its existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

54. Defendant Nichols knew, or was reckless in not knowing, that JDN Realty's conduct was improper, and he provided knowing and substantial assistance to JDN Realty in failing to implement adequate internal accounting controls during 1996 through 1999.

55. By reason of the foregoing, Defendant Nichols aided and abetted JDN Realty's violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]. Defendant Nichols therefore is liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], and is likely to commit such violations in the future unless he is enjoined.

#### COUNT VI

#### Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]

56. Paragraphs 1 through 35 are hereby realleged and are incorporated herein by reference.

57. Defendant Nichols, from 1994 through 1999, singly or in concert with others, knowingly circumvented JDN Realty's internal accounting controls or knowingly failed to implement certain systems of internal accounting controls, as described above.

58. Defendant Hughes, from 1996 through 1999, singly or in concert with others, knowingly falsified certain of JDN Realty's books, records, or accounts by failing to disclose all compensation and related-party transactions on the D&O Forms, as described above.

59. Defendant Whittelsey, from 1994 through 1999, singly or in concert with others, knowingly falsified certain of JDN Realty's books, records, or accounts by failing to disclose all

compensation and related-party transactions on the D&O Forms, as described above.

60. By reason of the foregoing, Defendants Nichols, Hughes, and Whittelsey have violated, and unless restrained and enjoined will continue to violate, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

#### COUNT VII

#### Violations of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)] and Rule 13b2-2 thereunder [17 C.F.R. § 240.13b2-2]

61. Paragraphs 1 through 35 are hereby realleged and are incorporated herein by reference.

62. Defendant Nichols, from 1994 through 1999, misled or omitted to tell JDN Realty's outside accountants material facts or statements, as described above.

63. By reason of the foregoing, Defendant Nichols has violated, and unless restrained and enjoined will continue to violate, Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)] and Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

COUNT VIII

Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9]

64. Paragraphs 1 through 35 are hereby realleged and are incorporated herein by reference.

65. JDN Realty's proxy statements filed on Form '14A on April 4, 1995 and April 7, 1996, failed to disclose accurately all compensation paid to Whittelsey and all transactions in which he held an interest. JDN Realty's proxy statements filed on Form 14A on March 28, 1997, April 3, 1998, and April 22, 1999, failed to disclose accurately all compensation paid to Hughes and Whittelsey and all transactions in which Nichols, Hughes, and Whittelsey held an interest.

66. Defendants Nichols and Whittelsey knew, or were reckless in not knowing, that JDN Realty's conduct was improper, and they provided knowing and substantial assistance to JDN Realty in filing false and misleading proxy statements during 1996 through 1999. Defendant Hughes knew, or was reckless in not knowing, that JDN Realty's conduct was improper, and he provided knowing and substantial assistance to JDN Realty in filing false and misleading proxy statements during 1997 through 1999.

67. By reason of the foregoing, Defendants Nichols, Hughes, and Whittelsey aided and abetted JDN Realty's violations of



Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 [17 C.F.R. § 240.14a-9]. Defendants Nichols, Hughes, and Whittelsey therefore are liable pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], and are likely to commit such violations in the future unless they are enjoined.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Securities and Exchange Commission respectfully prays for:

I.

A permanent injunction enjoining Defendant Nichols, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating:

a. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)];

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

c. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13];

d. Sections 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2]; and

e. Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9].

## II.

A permanent injunction enjoining Defendant Hughes, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating:

a. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)];

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

c. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13];

d. Sections 13(b)(2)(A) and 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A) and 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1]; and

e. Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9].

### III.

A permanent injunction enjoining Defendant Whittelsey, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of the order by personal service or otherwise, and each of them, from violating:

a. Section 17(a) of the Securities Act [15 U.S.C. 77q(a)];

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

c. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13];

d. Sections 13(b)(2)(A) and 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A) and 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1]; and

e. Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9].

### IV.

An order 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)] imposing civil penalties against Defendants Nichols, Hughes, and Whittelsey.

V.

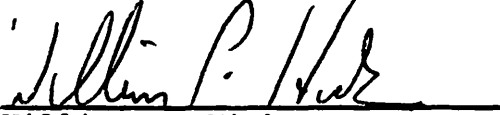
An order barring Defendants Hughes and Whittelsey from acting as officers or directors of any issuer required to file reports pursuant to Sections 12(b), 12(g), or 15(d) of the Exchange Act, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], as a result of their violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors. Further, the Securities and Exchange Commission respectfully prays that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that are entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

DATED: February 19, 2002

RESPECTFULLY SUBMITTED,



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