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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JAY GILBERTSON, ALBERT BERGONZI, and
DOMINICK DEROSA,

Defendants.

Civil Action No. 00-03570 SI

**[PROPOSED] FINAL JUDGMENT AS TO
ALBERT BERGONZI**

The Securities and Exchange Commission having filed a Complaint and Defendant Albert Bergonzi ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY 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, directly or indirectly, Section 10(b) of the Securities Exchange

1 Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder
2 [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the
3 mails, or of any facility of any national securities exchange, in connection with the purchase or sale of
4 any security:

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

11 II.

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

- 19 (a) to employ any device, scheme, or artifice to defraud;
- 20 (b) to obtain money or property by means of any untrue statement of a material fact or any
21 omission of a material fact necessary in order to make the statements made, in light of
22 the circumstances under which they were made, not misleading; or
- 23 (c) to engage in any transaction, practice, or course of business which operates or would
24 operate as a fraud or deceit upon the purchaser.

25 III.

26 IT IS FURTHER ORDERED; ADJUDGED AND DECREED that Defendant and Defendant's
27 agents, servants, employees, attorneys and all persons acting in concert or participation with any of
28 them, who receive actual notice of this Judgment, by personal service or otherwise, and each of them,

1 are permanently enjoined and restrained from knowingly circumventing or failing to implement a
2 system of internal accounting controls or knowingly falsifying any book, record, or account in
3 violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

4 IV.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's
6 agents, servants, employees, attorneys and all persons acting in concert or participation with any of
7 them, who receive actual notice of this Judgment by personal service or otherwise, and each of them,
8 are permanently enjoined and restrained from, directly or indirectly, by falsifying or causing to be
9 falsified any book, record or account in violation of Rule 13b2-1 under the Exchange Act [17 C.F.R.
10 § 240.13b2-1].

11 V.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section
13 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited from acting as an
14 officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the
15 Exchange Act [15 U.S.C. § 78j] or that is required to file reports pursuant to Section 15(d) of the
16 Exchange Act [15 U.S.C. § 78o(d)].

17 VI.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a
19 civil penalty in the amount of \$110,000.00, pursuant to Section 21(d)(3) of the Exchange Act [15
20 U.S.C. § 78u(d)(3)]. Defendant shall make this payment within ten (10) business days after entry of
21 this Final Judgment by certified check, bank cashier's check, or United States postal money order
22 payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the
23 Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432
24 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter
25 identifying Albert Bergonzi as a defendant in this action; setting forth the title and civil action number
26 of this action and the name of this Court; and specifying that payment is made pursuant to this Final
27 Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28

1 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United
2 States Treasury.

3 VII.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant's Consent is
5 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall
6 comply with all of the undertakings and agreements set forth therein.

7 VIII.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
9 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

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11 Dated: 6/6/08
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14 UNITED STATES DISTRICT JUDGE
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