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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,
DOMINICK DEROSA,

Defendants.

Case No. 00-03570 MJJ
[PROPOSED] FINAL JUDGMENT AS TO JAY
GILBERTSON

Defendant Jay Gilbertson ("Gilbertson"), who was represented by his counsel, has submitted a Consent of Jay Gilbertson to the Entry of Final Judgment ("Consent"), which was filed simultaneously with this [Proposed] Final Judgment As To Jay Gilbertson ("Judgment"). In the Consent, Gilbertson waived service of the summons and the complaint in this action, admitted the jurisdiction of this Court over him and over the subject matter of this action, admitted that he was fully advised and informed of the right to a judicial determination of this matter, waived findings of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure, consented to the entry of this Judgment, without admitting or denying any of the allegations in the

1 complaint except as set forth in the Consent, and waived notice of hearing upon the entry of this
2 Judgment. The Court, being fully advised in the premises, orders as follows.

3 I.

4 IT IS ORDERED, ADJUDGED AND DECREED that Gilbertson, his agents, servants,
5 employees, attorneys, and all persons acting in concert or participation with him, who receive actual
6 notice of this Judgment, by personal service or otherwise, and each of them, are permanently enjoined
7 and restrained from, directly or indirectly:

8 A. employing any device, scheme, or artifice to defraud;

9 B. obtaining money or property by means of any untrue statement of material fact or
10 omitting to state a material fact necessary in order to make the statements made,
11 in the light of the circumstances under which they were made, not misleading; or

12 C. engaging in any transaction, practice, or course of business which operates or
13 would operate as a fraud or deceit upon a purchaser,

14 in the offer or sale of any securities by the use of any means or instruments of transportation or
15 communication in interstate commerce or by the use of the mails in violation of Section 17(a) of the
16 Securities Act of 1933 [15 U.S.C. § 77q(a)].

17 II.

18 IT IS ORDERED, ADJUDGED AND DECREED that Gilbertson and his agents, servants,
19 employees, attorneys and all persons acting in concert or participation with any of them, who receive
20 actual notice of this Judgment, by personal service or otherwise, and each of them, are permanently
21 enjoined and restrained from, directly or indirectly:

22 A. employing any device, scheme, or artifice to defraud;

23 B. making any untrue statement of a material fact or omitting to state a material fact
24 necessary in order to make the statements made, in the light of the circumstances
25 under which they were made, not misleading; or

26 C. engaging in any act, practice, or course of business which operates or would operate as
27 a fraud or deceit upon any person,
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1 in connection with the purchase or sale of the securities of any issuer, by the use of any means or
2 instrumentality of interstate commerce, or of the mails, or of any facility of any national securities
3 exchange in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15
4 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

5 III.

6 IT IS ORDERED, ADJUDGED AND DECREED that Gilbertson and his agents, servants,
7 employees, attorneys and all persons acting in concert or participation with any of them, who receive
8 actual notice of this Judgment, by personal service or otherwise, and each of them, are permanently
9 enjoined and restrained from knowingly circumventing or failing to implement a system of internal
10 accounting controls or knowingly falsifying any book, record, or account in violation of Section
11 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

12 IV.

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

18 V.

19 IT IS ORDERED, ADJUDGED AND DECREED that Gilbertson and his agents, servants,
20 employees, attorneys and all persons acting in concert or participation with any of them, who receive
21 actual notice of this Judgment by personal service or otherwise, and each of them, are permanently
22 enjoined and restrained from directly or indirectly making or causing to be made a materially false or
23 misleading statement, or by omitting to state or causing another person to omit to state, any material
24 fact necessary in order to make statements made, in light of the circumstances under which such
25 statements were made, not misleading, to an accountant in connection with (A) any audit or
26 examination of the financial statements of an issuer required to be made pursuant to the federal
27 securities laws or (B) the preparation or filing of any document or report required to be filed with the
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1 Commission pursuant to the federal securities laws or otherwise in violation of Rule 13b2-2 under the
2 Exchange Act [17 C.F.R. § 240.13b2-2].

3 VI.

4 IT IS ORDERED, ADJUDGED AND DECREED that defendant Gilbertson shall disgorge
5 \$733,360.00 in ill-gotten gains plus prejudgment interest. Payment of this obligation has been
6 satisfied by Gilbertson's payment of restitution pursuant to his plea agreement in United States v.
7 Bergonzi, CR 00-505 MJJ.

8 VII.

9 IT IS ORDERED, ADJUDGED AND DECREED that defendant Gilbertson is assessed, and
10 shall pay to the Clerk of the Court civil penalties under Section 21(d)(3) of the Exchange Act [15
11 U.S.C. § 78u(d)(3)] in the amount of one million dollars (\$1,000,000). All payments shall be made
12 by cashier's check, certified check or postal money order, payable to the Clerk of the Court and
13 transmitted under cover of a letter that identifies Gilbertson and specifies that payment is to be added
14 to the funds paid by Gilbertson in United States v. Bergonzi, CR 00-0505 MJJ. Copies of the cover
15 letter shall be simultaneously transmitted to the attention of the District Administrator at the
16 Commission's San Francisco District Office, 44 Montgomery Street, Suite 1100, San Francisco, CA
17 94104. By making this payment, Gilbertson relinquishes all legal and equitable right, title and
18 interest in such funds, and no part of the funds shall be returned to Gilbertson. The Clerk shall
19 deposit the funds in an interest bearing account with the Court Registry Investment System ("CRIS")
20 together with any funds Gilbertson paid in United States v. Bergonzi, CR 00-0505 MJJ. These funds,
21 together with any interest and income earned (collectively, the "Fund"), shall be held by the CRIS
22 until further order of the Court. The United States Attorney or the Commission may, by motion,
23 propose a plan to distribute the Fund subject to court approval. Such a plan may provide that Fund
24 shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act
25 of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid
26 as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all
27 purposes, including all tax purposes.

VIII.

IT IS ORDERED, ADJUDGED AND DECREED that Gilbertson is prohibited from serving as an officer or director of any issuer of a security registered pursuant to Section 12 or Section 15(d) of the Exchange Act.

IX.

IT IS ORDERED, ADJUDGED AND DECREED that Gilbertson shall cooperate with the Commission and truthfully disclose all information with respect to the facts and events relating to the ongoing investigation by the Commission that has resulted, in part, in the filing of the Complaint; testify in all investigations, administrative and judicial proceedings in which the Commission may request his testimony; make himself available for depositions and interviews as the Commission, upon reasonable notice, may request; produce all documents within his possession, custody or control, which are requested by the Commission; be accompanied at any time he so desires by counsel of his choice; give truthful and accurate information and testimony. If asked to testify in any such proceeding by the United States Attorney pursuant to paragraph 10 of Gilbertson's plea agreement in United States v. Bergonzi, CR 00-0505 MJJ, then, in accordance with the express waiver contained in his Consent, Gilbertson shall not assert any privilege against self-incrimination he may have, or any other privilege or evidentiary objection (other than the attorney-client privilege and work product immunity) in such testimony.

X.

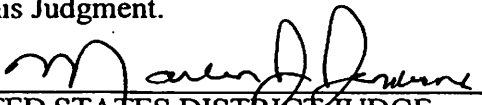
IT IS ORDERED, ADJUDGED AND DECREED that the provisions of the Consent filed concurrently with this Judgment are incorporated by this reference as though fully set forth and that Gilbertson shall comply with the Consent.

XI.

IT IS ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for the purposes of implementing and carrying out the terms of all orders and decrees which may be entered and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

1 There being no just reason for delay, the Clerk of the Court is directed, pursuant to Rule 54(b)
2 of the Federal Rules of Civil Procedure, to enter this Judgment.

3 DATED: 7/1/2003


UNITED STATES DISTRICT JUDGE

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