

1 HELANE L. MORRISON (#127752)
2 SUSAN F. LA MARCA (#215231)
3 ELENA RO (#197308)

FILED

OCT 28 2005

4 Attorneys for Plaintiff
5 SECURITIES AND EXCHANGE COMMISSION
6 44 Montgomery Street, Suite 2600
7 San Francisco, California 94104
8 Telephone: (415) 705-2500

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 SECURITIES AND EXCHANGE COMMISSION, Case No. C-01-3376 VRW

13 Plaintiff,

~~PROPOSED~~ FINAL JUDGMENT
AGAINST DEFENDANT SALVATORE
CENSOPRANO

14 vs.

15 M & A WEST, INC., et al.

16 Defendants.

17
18 The Plaintiff Securities and Exchange Commission ("Plaintiff" or "Commission") has filed
19 its Complaint in this action. Defendant Salvatore Censoprano ("Defendant" or "Censoprano") has
20 entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject
21 matter of this action; consented to entry of this Final Judgment Against Defendant Salvatore
22 Censoprano ("Final Judgment") without admitting or denying the allegations of the Complaint
23 (except as to jurisdiction); waived findings of fact and conclusions of law as provided by Rule 52
24 of the Federal Rules of Civil Procedure; and waived any right to appeal from this Final Judgment.

25 I.

26 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant
27 Censoprano, his agents, servants, employees, attorneys, and all persons in active concert or
28 participation with them who receive actual notice of this Order by personal service or otherwise

1 are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the
2 Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, by using any
3 means or instrumentality of interstate commerce, or of the mails, or of any facility of any national
4 securities exchange, in connection with the purchase or sale of 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
7 fact necessary in order to make the statements made, in the light of the
8 circumstances 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 Censoprano,
13 his agents, servants, employees, attorneys, assigns, and all persons in active concert or
14 participation with them who receive actual notice of this order by personal service or otherwise are
15 permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the
16 Exchange Act, 15 U.S.C. § 78m(a), and 17 C.F.R. §§ 240.12b-20 and 240.13a-1, 240.13a-11, and
17 240.13a-13, by knowingly providing substantial assistance to any issuer that has securities
18 registered pursuant to 15 U.S.C. § 78l, and which fails to file with the Commission an annual
19 report, or a quarterly report, or a current report on the appropriate form authorized or prescribed
20 and in the time prescribed therefor, which in addition to the information expressly required to be
21 included in the report also contains such further material information, if any, as may be necessary
22 to make the required statements, in the light of the circumstances under which they are made, not
23 misleading.

24 III.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Censoprano,
26 his agents, servants, employees, attorneys, assigns, and all persons in active concert or
27 participation with them who receive actual notice of this order by personal service or otherwise are
28 permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A)

1 of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), by providing substantial assistance to any issuer
2 which has a class of securities registered pursuant to 15 U.S.C. § 78l and which fails to make and
3 keep books, records, or accounts, which, in reasonable detail, accurately and fairly reflect the
4 transactions and dispositions of the assets of the issuer.

5 IV.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Censoprano,
7 his agents, servants, employees, attorneys, assigns, and all persons in active concert or
8 participation with them who receive actual notice of this order by personal service or otherwise are
9 permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(B)
10 of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B), by providing substantial assistance to any issuer
11 which has a class of securities registered pursuant to 15 U.S.C. § 78l and which fails to devise or
12 maintain a system of internal accounting controls sufficient to provide reasonable assurances that
13 transactions are executed in accordance with management's general or specific authorization; or
14 fails to record transactions as necessary to permit preparation of financial statements in conformity
15 with generally accepted accounting principles or any other criteria applicable to such statements,
16 and to maintain accountability for its assets.

17 V.

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Censoprano,
19 his agents, servants, employees, attorneys, assigns, and all persons in active concert or
20 participation with them who receive actual notice of this order by personal service or otherwise are
21 permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act, 15
22 U.S.C. § 78m(b)(5), by knowingly circumventing or failing to implement a system of internal
23 accounting controls or by knowingly falsifying any book, record, or account described in 15
24 U.S.C. § 78m(b)(2)(A).

25 VI.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Censoprano,
27 his agents, servants, employees, attorneys, assigns, and all persons in active concert or
28 participation with them who receive actual notice of this order by personal service or otherwise are

1 permanently restrained and enjoined from violating 17 C.F.R. § 240.13b2-1, by falsifying or
2 causing to be falsified any book, record or account subject to 15 U.S.C. § 78m(b)(2)(A).

3 VII.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Censoprano,
5 his agents, servants, employees, attorneys, assigns, and all persons in active concert or
6 participation with them who receive actual notice of this order by personal service or otherwise are
7 permanently restrained and enjoined from violating 17 C.F.R. § 240.13b2-2, by, as a director or
8 officer of an issuer, directly or indirectly making or causing to be made to an accountant in
9 connection with an audit, review or examination of the financial statements of the issuer, or in
10 preparation or filing of a document or report, required to be made or filed pursuant to statute or to
11 the Commission's rules or otherwise, a materially false or misleading statement, or an omission of
12 a material fact necessary to make statements made, in the light of the circumstances under which
13 they were made, not misleading.

14 VIII.

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Censoprano
16 shall pay civil penalties in the amount of \$250,000 pursuant to the Exchange Act, 15 U.S.C. §
17 78u(d)(3). Defendant shall make this payment by paying no less than \$150,000 within ten (10)
18 business days after entry of this Order by certified check, bank cashier's check, or United States
19 postal money order payable to the Securities and Exchange Commission. Defendant shall pay the
20 remainder of the \$250,000 in civil penalties within 360 calendar days after the entry of this Order
21 by certified check, bank cashier's check, or United States postal money order payable to the
22 Securities and Exchange Commission. Each payment shall be delivered or mailed to the Office of
23 Financial Management, Securities and Exchange Commission, Operations Center, 6432 General
24 Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter
25 identifying Salvatore Censoprano as a defendant in this action; setting forth the title and civil
26 action number of this action and the name of this Court; and specifying that payment is made
27 pursuant to this Order. Defendant shall deliver or mail a copy of such letter and a copy of the
28 enclosed payment instrument (check or money order) to Susan F. LaMarca, Trial Counsel,

1 Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco,
2 California, 94104. Defendant Censoprano shall pay post-judgment interest on any delinquent
3 amounts pursuant to 28 USC § 1961.

4 IX.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section
6 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), Defendant Censoprano is prohibited from
7 acting as an officer or director of any issuer that has a class of securities registered pursuant to
8 Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
9 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

10 X.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of
12 Defendant Salvatore Censoprano to Entry of Final Judgment ("Consent") is incorporated herein
13 with the same force and effect as if fully set forth herein, and that Defendant Censoprano shall
14 comply with all of the undertakings and agreements set forth therein.

15 XI.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
17 jurisdiction of this matter for the purpose of enforcing the terms of this Final Judgment and for all
18 other purposes.

19 XII.

20 There being no just reason for delay, pursuant to Federal Rule of Civil Procedure 54(b), the
21 Clerk is hereby directed to enter this judgment against Defendant Censoprano forthwith and
22 without delay.

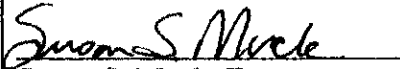
23
24
25 DATED: 28 OCT 2005



United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:



Susan S. Muck, Esq.
FENWICK & WEST LLP
275 Battery Street
San Francisco, California 94111
(415) 875-2300
Fax: (415) 281-1350
Counsel for Defendant Salvatore Censoprano

SUBMITTED BY:



Susan F. LaMarca, Esq.
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2600
San Francisco, California 94104
(415) 705-2500
Fax: (415) 705-2501
Counsel for Plaintiff