

HELANE L. MORRISON (State Bar No. 127752)  
JAMES A. HOWELL (State Bar No. 92721)  
ROBERT L. MITCHELL (State Bar No. 161354)  
MICHAEL S. DICKE (State Bar No. 158187)  
JUDITH L. ANDERSON (State Bar No. 124281)

Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
44 Montgomery Street, Suite 1100  
San Francisco, California 94104  
Telephone: (415) 705-2500

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORIGINAL  
FILED

OCT X 2 2001

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

EMC

SECURITIES AND EXCHANGE COMMISSION

Case No. 01-3651

Plaintiff,

vs.

MICHAEL G. SMERASKI, TIMOHTY S.  
HEYERDAHL, DAVID F. HELD, ELAINE A.  
DECKER, and DEBORAH J. MATTIFORD,

[PROPOSED] FINAL JUDGMENT OF  
PERMANENT INJUNCTION AND OTHER  
EQUITABLE AND STATUTORY RELIEF  
AGAINST ELAINE A. DECKER

Defendants.

Plaintiff Securities and Exchange Commission ("Commission") has filed its Complaint for Permanent Injunction and Legal and Other Equitable Relief ("Complaint") in this action. Defendant Elaine A. Decker ("Decker"), who was represented by her counsel, has submitted a Consent to the Entry of Permanent Injunction and Legal and Other Equitable Relief ("Consent"), which was filed simultaneously with this Final Judgment of Permanent Injunction and Legal and Other Equitable Relief ("Final Judgment") and incorporated herein by reference. In the Consent, Decker waived service of the Summons and the Complaint, admitted the jurisdiction of this Court over her and over the subject matter of this action, admitted that she 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

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2 the entry of this Final Judgment, without admitting or denying any of the allegations in the  
3 Complaint except as set forth in the Consent, and waived notice of hearing upon the entry of this  
4 Final Judgment. The Court, being fully advised in the premises, orders as follows.

5 I.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Decker, her agents,  
7 servants, employees, attorneys, and all persons acting in concert or participation with her, who  
8 receive actual notice of this Final Judgment, by personal service or otherwise, and each of them,  
9 are permanently enjoined and restrained from, directly or indirectly, violating Section 17(a) of  
10 the Securities Act of 1933 [15 U.S.C. § 77q(a)] by:

- 11 A. employing any device, scheme, or artifice to defraud;  
12 B. obtaining money or property by means of any untrue statement of material fact or  
13 omitting to state a material fact necessary in order to make the statements made,  
14 in the light of the circumstances under which they were made, not misleading; or  
15 C. engaging in any transaction, practice, or course of business which operates or  
16 would operate as a fraud or deceit upon a purchaser,

17 in the offer or sale of any securities by the use of any means or instruments of transportation or  
18 communication in interstate commerce or by the use of the mails.

19 II.

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Decker and her agents,  
21 servants, employees, attorneys and all persons acting in concert or participation with any of them,  
22 who receive actual notice of this Final Judgment, by personal service or otherwise, and each of  
23 them, are permanently enjoined and restrained from, directly or indirectly, violating Section  
24 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule  
25 10b-5 thereunder [17 C.F.R. § 240.10b-5] by:

- 26 A. employing any device, scheme, or artifice to defraud;  
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2 B. making any untrue statement of a material fact or omitting to state a material fact  
3 necessary in order to make the statements made, in the light of the circumstances  
4 under which they were made, not misleading; or

5 C. engaging in any act, practice, or course of business which operates or would  
6 operate as a fraud or deceit upon any person.

7 in connection with the purchase or sale of the securities of any issuer, by the use of any means or  
8 instrumentality of interstate commerce, or of the mails, or of any facility of any national  
9 securities exchange.

10 III.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Decker and her  
12 agents, servants, employees, attorneys and all persons acting in concert or participation with any  
13 of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and  
14 each of them, are permanently enjoined and restrained from, directly or indirectly, violating  
15 Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] by causing any issuer which has a class  
16 of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section  
17 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to file with the Commission, such accurate  
18 and complete information, reports, and documents as are required to be filed with the  
19 Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], including but  
20 not limited to, quarterly reports on Form 10-Q [17 C.F.R. § 249.308a] as prescribed by  
21 Commission Rule 13a-13 [17 C.F.R. § 240.13a-13], such information and documents to contain,  
22 in addition to such information as is expressly required to be included in a statement or report to  
23 the Commission, such further material information, if any, as may be necessary to make the  
24 required statements, in the light of the circumstances under which they are made, not misleading,  
25 as prescribed by Commission Rule 12b-20 [17 C.F.R. § 240.12b-20].  
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2 IV.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Decker and her  
4 agents, servants, employees, attorneys and all persons in active concert and participation with  
5 any of them, who receive actual notice of this Final Judgment by personal service or otherwise,  
6 and each of them, are permanently enjoined and restrained from, directly or indirectly, violating  
7 Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by causing any issuer  
8 which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C.  
9 § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to make or keep books,  
10 records or accounts, which, in reasonable detail, accurately and fairly reflect the transactions and  
11 dispositions of the assets of the issuer.

12 V.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Decker and her  
14 agents, servants, employees, attorneys and all persons acting in concert or participation with any  
15 of them, who receive actual notice of this Final Judgment by personal service or otherwise, and  
16 each of them, are permanently enjoined and restrained from, directly or indirectly, violating Rule  
17 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing to be falsified  
18 any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §  
19 78m(b)(2)(A)].

20 VI.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Decker and her  
22 agents, servants, employees, attorneys and all persons in active concert and participation with  
23 any of them, who receive actual notice of this Final Judgment by personal service or otherwise,  
24 and each of them, are permanently enjoined and restrained from, directly or indirectly, violating  
25 Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by causing any issuer  
26 which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C.  
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2 § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to devise and maintain a  
3 system of internal accounting controls sufficient to provide reasonable assurances that:

- 4 A. transactions are executed in accordance with management's general or specific  
5 authorization;
- 6 B. transactions are recorded as necessary (i) to permit preparation of financial  
7 statements in conformity with generally accepted accounting principles or any  
8 other criteria applicable to such statements, and (ii) to maintain accountability for  
9 assets;
- 10 C. access to assets is permitted only in accordance with management's general or  
11 specific authorization; and
- 12 D. the recorded accountability for assets is compared with the existing assets at  
13 reasonable intervals and appropriate action is taken with respect to any  
14 differences.

15 VII.

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

23 VIII.

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Decker is  
25 assessed, and shall pay to the Commission for delivery to the United States Treasury, civil  
26 penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], in the amount of  
27 \$35,000. In addition, Decker shall pay postjudgement interest, as calculated pursuant to 28

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2 U.S.C. § 1961, on any amount of the \$35,000 penalty that remains outstanding thirty days after  
3 the entry of this Final Judgment. All payments shall be made by cashier's check, certified check  
4 or postal money order, payable to the United States Treasury, and shall be transmitted to the  
5 Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C.  
6 20549, under cover of a letter which identifies the defendant, the caption and civil action number  
7 of this matter, this Court, and the Commission's internal case number (LA-1027). Copies of each  
8 of the cover letters shall be simultaneously transmitted to counsel for the Commission at its San  
9 Francisco office.

10 IX.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon Decker's receipt  
12 of a document from the office of the U.S. Attorney stating the intent of that office not to pursue  
13 criminal charges against Decker relating to the conduct described in the Complaint, Decker's  
14 receipt of immunity from the office of the U.S. Attorney relating to the conduct described in the  
15 Complaint, or entry of final judgment of criminal liability relating to the conduct described in the  
16 Complaint, Decker shall cooperate with the Commission and truthfully disclose all information  
17 with respect to the facts and events relating to the ongoing investigation by the Commission that  
18 has resulted, in part, in the filing of the Complaint; testify in all investigations, administrative  
19 and judicial proceedings in which the Commission may request her testimony; make herself  
20 available for depositions and interviews as the Commission, upon reasonable basis, may request;  
21 produce all documents within her possession, custody or control, which are requested by the  
22 Commission; be accompanied at any time she so desires by counsel of her choice; give truthful  
23 and accurate information and testimony; and (consistent with the express waiver contained in the  
24 Consent) not assert any fifth amendment privilege against self-incrimination she may have, or  
25 any other privilege or evidentiary objection (other than the attorney-client privilege and work  
26 product immunity) in connection with her cooperation.  
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X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions of the Consent filed concurrently with this Final Judgment are incorporated herein with the same force and effect as if fully set forth herein and that Decker shall comply with the Consent.

XI.

IT IS FURTHER 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 herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

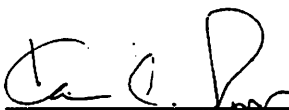
There being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith

Dated: OCT X 2 2001, 2000

MAXINE M. CHESNEY

United States District Court Judge

APPROVED AS TO FORM:



Karen A. Popp, Esq.  
Sidley & Austin  
Counsel for Defendant Elaine A. Decker