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NORTHERN DISTRICT OF CALIFORNIA

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MMC

1 HELANE L. MORRISON (State Bar No. 127752)  
2 JAMES A. HOWELL (State Bar No. 92721)  
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5 JUDITH L. ANDERSON (State Bar No. 124281)

6 Attorneys for Plaintiff  
7 SECURITIES AND EXCHANGE COMMISSION  
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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 SECURITIES AND EXCHANGE COMMISSION,  
15 Plaintiff,  
16 vs.  
17 MICHAEL G. SMERASKI, TIMOTHY S.  
18 HEYERDAHL, DAVID F. HELD, ELAINE A.  
19 DECKER, and DEBORAH J. MATTIFORD  
20 Defendants.

Case No. **C 01 3651**

~~PROPOSED~~ FINAL JUDGMENT OF  
PERMANENT INJUNCTION AND OTHER  
EQUITABLE AND STATUTORY RELIEF  
AGAINST TIMOTHY HEYERDAHL

21 Plaintiff Securities and Exchange Commission ("Commission") has filed its Complaint  
22 for Permanent Injunction and Other and Statutory Relief ("Complaint") in this action. Defendant  
23 Timothy Heyerdahl ("Heyerdahl"), who was represented by his counsel, has submitted a Consent  
24 to the Entry of Permanent Injunction and Other Equitable and Statutory Relief ("Consent"),  
25 which was filed simultaneously with this Final Judgment of Permanent Injunction and Other  
26 Equitable and Statutory Relief ("Final Judgment") and incorporated herein by reference. In the  
27 Consent, Heyerdahl waived service of the Summons and the Complaint, admitted the jurisdiction  
28 of this Court over him and over the subject matter of this action, admitted that he was fully

~~PROPOSED~~ FINAL JUDGMENT AGAINST  
TIMOTHY HEYERDAHL - CASE NO. \_\_\_\_\_

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2 advised and informed of the right to a judicial determination of this matter, waived findings of  
3 fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure,  
4 consented to the entry of this Final Judgment, without admitting or denying any of the allegations  
5 in the Complaint except as set forth in the Consent, and waived notice of hearing upon the entry  
6 of this Final Judgment. The Court, being fully advised in the premises, orders as follows.

7 I.

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

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

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

21 II.

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Heyerdahl and his  
23 agents, servants, employees, attorneys-in-fact and all persons acting in concert or participation  
24 with any of them, who receive actual notice of this Final Judgment, by personal service or  
25 otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly,  
26 violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §  
27 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by:  
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- 2 A. employing any device, scheme, or artifice to defraud;
- 3 B. making any untrue statement of a material fact or omitting to state a material fact
- 4 necessary in order to make the statements made, in the light of the circumstances
- 5 under which they were made, not misleading; or
- 6 C. engaging in any act, practice, or course of business which operates or would
- 7 operate as a fraud or deceit upon any person,

8 in connection with the purchase or sale of the securities of any issuer, by the use of any means or

9 instrumentality of interstate commerce, or of the mails, or of any facility of any national

10 securities exchange.

11 III.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Heyerdahl and his

13 agents, servants, employees, attorneys-in-fact and all persons in active concert and participation

14 with any of them, who receive actual notice of this Final Judgment by personal service or

15 otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly,

16 violating Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by causing any

17 issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15

18 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to make or keep

19 books, records or accounts, which, in reasonable detail, accurately and fairly reflect the

20 transactions and dispositions of the assets of the issuer.

21 IV.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Heyerdahl and

23 his agents, servants, employees, attorneys-in-fact and all persons acting in concert or

24 participation with any of them, who receive actual notice of this Final Judgment by personal

25 service or otherwise, and each of them, are permanently enjoined and restrained from, directly or

26 indirectly, violating Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying

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2 or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the  
3 Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

4 V.

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

17 VI.

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

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

13 VII.

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Heyerdahl and his

15 agents, servants, employees, attorneys-in-fact and all persons acting in concert or participation

16 with any of them, who receive actual notice of this Final Judgment, by personal service or

17 otherwise, and each of them, are permanently enjoined and restrained from violating Section

18 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to

19 implement a system of internal accounting controls or knowingly falsifying any book, record, or

20 account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

21 VIII.

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Heyerdahl and his

23 agents, servants, employees and attorneys-in-fact, and all persons in active concert or

24 participation with any of them, who receive actual notice of this Final Judgment, by personal

25 service or otherwise, and each of them, are permanently enjoined from violating Section 13(a) of

26 the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-13 promulgated thereunder

27 [17 C.F.R. §§ 240.12b-20 and 240.13a-13] by causing any issuer which has a class of securities

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2 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or Section 15(d) of the  
3 Exchange Act [15 U.S.C. § 78o] to fail to file with the Commission such accurate and complete  
4 information, reports, and documents as are required to be filed with the Commission pursuant to  
5 Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the Commission's Rules thereunder,  
6 including but not limited to, quarterly reports on Form 10-Q [17 C.F.R. § 249.308a] as prescribed  
7 by Commission Rule 13a-13 [17 C.F.R. § 240.13a-13], such information and documents to  
8 contain, in addition to such information as is expressly required to be included in a statement or  
9 report to the Commission, such further material information, if any, as may be necessary to make  
10 the required statements, in the light of the circumstances under which they are made, not  
11 misleading, as prescribed by Commission Rule 12b-20 [17 C.F.R. § 240.12b-20].

12 IX.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Heyerdahl  
14 shall disgorge \$454,862.11, the amount he received as a result of selling his shares of HBO &  
15 Co. and/or McKesson HBOC, Inc. common stock into the market at a time when the price of the  
16 stock was inflated due to the fraudulent activities alleged in the Complaint. In addition,  
17 Heyerdahl shall pay \$66,630.07 in prejudgment interest on the disgorgement amount. These  
18 payments shall be made within thirty days of the entry of this Final Judgment. They shall be  
19 made by cashier's check, certified check or postal money order, payable to the United States  
20 Treasury, and shall be transmitted to the Comptroller, Securities and Exchange Commission, 450  
21 Fifth Street, N.W., Washington, D.C. 20549, under cover of a letter which identifies the  
22 defendant, the caption and civil action number of this matter, this Court, and the Commission's  
23 internal case number (LA-1027). Copies of each of the cover letters shall be simultaneously  
24 transmitted to the attention of the District Administrator at the Commission's San Francisco  
25 District office, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104.

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2 X.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Heyerdahl  
4 is assessed, and shall pay to the Commission for delivery to the United States Treasury, civil  
5 penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], in the amount of  
6 \$100,000. This payment shall be made within thirty (30) days of the entry of this Final  
7 Judgment. Heyerdahl shall pay post judgment interest, as calculated pursuant to 28 U.S.C. §  
8 1961, on any amount of the \$100,000 penalty that remains outstanding thirty days after the entry  
9 of this Final Judgment. All payments shall be made by cashier's check, certified check or postal  
10 money order, payable to the United States Treasury, and shall be transmitted to the Comptroller,  
11 Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, under  
12 cover of a letter which identifies the defendant, the caption and civil action number of this  
13 matter, this Court, and the Commission's internal case number (SF-1027-B). Copies of each of  
14 the cover letters shall be simultaneously transmitted to the attention of the District Administrator  
15 at the Commission's San Francisco District office, 44 Montgomery Street, Suite 1100, San  
16 Francisco, CA 94104.

17 XI.

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Heyerdahl is hereby  
19 prohibited from serving, for a period of five years from the date of entry of this Final Judgment,  
20 as an officer or director of any issuer of a security registered pursuant to Section 12 or Section  
21 15(d) of the Exchange Act.

22 XII.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Heyerdahl shall  
24 cooperate with the Commission and truthfully disclose all information with respect to the facts  
25 and events relating to the ongoing investigation by the Commission that has resulted, in part, in  
26 the filing of the Complaint; testify in all investigations, administrative and judicial proceedings in  
27 which the Commission may request his testimony; make himself available for depositions and  
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2 interviews as the Commission, upon reasonable notice, may request; produce all documents  
3 within his possession, custody or control, which are requested by the Commission; be  
4 accompanied at any time he so desires by counsel of his choice; give truthful and accurate  
5 information and testimony; and (consistent with the express waiver contained in the Consent) not  
6 assert any fifth amendment privilege against self-incrimination he may have, or any other  
7 privilege or evidentiary objection (other than the attorney-client privilege and work product  
8 immunity) in connection with his cooperation.

9 XIII.

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

13 XIV.

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


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

20 Dated: OCT X 2 2001, 200  

21 MAXINE M. CHESNEY

22 United States District Court Judge

23 APPROVED AS TO FORM:

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25 Bruce Morris, Esq.  
26 Firestone & Morris  
27 Suite 2540 Tower Place  
28 3340 Peachtree Road, Northeast  
Atlanta, GA 30326  
Counsel for Defendant Timothy Heyerdahl