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FILED  
CLERK, U.S. DISTRICT COURT  
JUL 19 2001  
CENTRAL DISTRICT OF CALIFORNIA  
BY

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11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION

ENTERED  
CLERK, U.S. DISTRICT COURT  
JUL 20 2001  
CENTRAL DISTRICT OF CALIFORNIA  
BY

14 SECURITIES AND EXCHANGE COMMISSION,  
15 Plaintiff,  
16 vs.  
17 DAVID CLARK STEWART,  
18 Defendant.

Case No. 01-06136 (EX)

~~PROPOSED~~ FINAL JUDGMENT OF  
PERMANENT INJUNCTION AND OTHER  
RELIEF AGAINST DEFENDANT DAVID  
CLARK STEWART

19 Plaintiff Securities and Exchange Commission ("Commission"), having filed and served upon  
20 Defendant David Clark Stewart ("Stewart") a Summons and Complaint in this matter and Stewart  
21 having admitted service upon him of the Summons and Complaint in this action and the jurisdiction  
22 of this Court over him and over the subject matter of this action; having been fully advised and  
23 informed of his rights to a judicial determination of this matter; having waived the entry of findings  
24 of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure; having  
25 consented to the entry of this Final Judgment of Permanent Injunction and Other Relief Against  
26 Defendant David Clark Stewart ("Final Judgment") without admitting or denying the allegations in  
27 the Complaint, except as specifically set forth in the Consent of Defendant David Clark Stewart to  
28 Entry of Final Judgment of Permanent Injunction and Other Relief ("Consent"); and it appearing that

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JUL 20 2001

FINAL JUDGMENT OF PERMANENT INJUNCTION

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1 no notice of hearing upon the entry of this Final Judgment being necessary; and the Court being fully  
2 advised in the premises, and there being no just reason for delay:

3 I.

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Stewart and his agents,  
5 servants, employees and attorneys, and all persons in active concert or participation with any of them,  
6 who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them,  
7 are permanently restrained and enjoined from, directly or indirectly, in the offer or sale of the  
8 securities of any issuer, by the use of any means or instruments of transportation or communication in  
9 interstate commerce or by the use of the mails:

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

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

14 C. engaging in any transaction, practice, or course of business which operates or would  
15 operate as a fraud or deceit upon the purchaser; in violation of Section 17(a) of the Securities Act of  
16 1933 ("Securities Act"), 15 U.S.C. § 77q(a).

17 II.

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stewart and his agents,  
19 servants, employees and attorneys, and all persons in active concert or participation with any of them,  
20 who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them,  
21 are permanently restrained and enjoined from, directly or indirectly, by the use of any means or  
22 instrumentality of interstate commerce, or of the mails, or of any facility of any national securities  
23 exchange:

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

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

28 \*

1 C. engaging in any act, practice, or course of business which operates or would operate as  
2 a fraud or deceit upon any person, in connection with the purchase or sale of any security;  
3 in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §  
4 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

5 III.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stewart, and his agents,  
7 servants, employees and attorneys, and all persons in active concert or participation with any of them,  
8 who receive actual notice of this Final Judgment by personal service or otherwise, and each of them,  
9 are permanently restrained and enjoined from, directly or indirectly, by use of the mails or any means  
10 or instrumentality of interstate commerce, while acting as an investment adviser:

11 A. employing any devices, schemes or artifices to defraud advisory clients or prospective  
12 advisory clients, in violation of Section 206(1) of the Investment Advisers Act of 1940 ("Advisers  
13 Act"), 15 U.S.C. § 80b-6(1); and

14 B. engaging in transactions, practices or courses of business which operate as a fraud or  
15 deceit upon advisory clients or prospective advisory clients, in violation of Section 206(2) of the  
16 Advisers Act, 15 U.S.C. § 80b-6(2).

17 IV.

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stewart shall pay  
19 disgorgement in the amount of \$356,000 representing his gains from the conduct alleged in the  
20 Complaint (minus \$154,000 paid in restitution), plus pre-judgment interest thereon in the amount of  
21 \$54,957.83. Based upon Stewart's sworn representations in his Statement of Financial Condition  
22 dated February 21, 2001, and submitted to the Commission, payment of disgorgement of \$202,000  
23 plus pre-judgment interest thereon, are waived, contingent upon the accuracy and completeness of his  
24 Statement of Financial Condition.

25 V.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon Stewart's  
27 sworn representations in his Statement of Financial Condition, the Court is not ordering him to pay a  
28 civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of

1 the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-  
2 9(e). The determination not to impose a civil penalty and to waive payment of the disgorgement and  
3 pre-judgment interest thereon is contingent upon the accuracy and completeness of his Statement of  
4 Financial Condition. If at any time following the entry of this Final Judgment the Commission  
5 obtains information indicating that Stewart's representations to the Commission concerning his  
6 assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate or incomplete in any  
7 material respect as of the time such representations were made, the Commission may, at its sole  
8 discretion and without prior notice to Stewart, petition this Court for an order requiring Stewart to  
9 pay the disgorgement, pre-judgment and post-judgment interest thereon, and a civil penalty. In  
10 connection with any such petition, the only issues shall be whether the financial information provided  
11 by Stewart was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time  
12 such representations were made, and the amount of civil penalty to be imposed. In its petition, the  
13 Commission may move this Court to consider all available remedies, including, but not limited to,  
14 ordering Stewart to pay funds or assets, directing the forfeiture of any assets, or sanctions for  
15 contempt of this Final Judgment, and the Commission may also request additional discovery.  
16 Stewart may not, by way of defense to such petition, challenge the validity of this Consent or the  
17 Final Judgment, contest the allegations in the Complaint filed by the Commission, the amount of  
18 disgorgement and interest, or assert that disgorgement or the payment of a civil penalty should not be  
19 ordered.

20 VI.

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

24 \*  
25 \*  
26 \*  
27 \*  
28 \*


VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action to implement and enforce the terms of the Final Judgment and other decrees that may be entered herein and to grant such other relief as the Court may deem necessary and just.

\* \* \* \* \*

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: July 19, 2001

  
UNITED STATES DISTRICT JUDGE

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