

1  
2 HELANE L. MORRISON (Calif. Bar No. 127752)  
3 JOHN S. YUN (Calif. Bar No. 112260)  
4 MICHAEL S. DICKE (Calif. Bar No. 158187)  
5 PATRICK THOMAS MURPHY (N.Y. Bar No. 2685717)

6 Attorneys for Plaintiff  
7 SECURITIES AND EXCHANGE COMMISSION  
8 44 Montgomery Street, Suite 1100  
9 San Francisco, California 94104  
10 Telephone: (415) 705-2500  
11 Fax: (415) 705-2501

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 SECURITIES AND EXCHANGE COMMISSION,  
16 Plaintiff,  
17 vs.  
18 MARK APTON, RAJIV AGRAWAL, and SON D.  
19 PHAN  
20 Defendants.

Civil Action No. C-01-21068-JW

~~PROPOSED~~ FINAL JUDGMENT OF  
PERMANENT INJUNCTION AND LEGAL  
AND OTHER EQUITABLE RELIEF  
AGAINST SON D. PHAN

21 Plaintiff Securities and Exchange Commission (“Commission”) has filed its Complaint  
22 for Permanent Injunction and Other Relief (“Complaint”) in this action. Defendant Son D. Phan  
23 (“Phan”) has submitted a Consent to the Entry of Permanent Injunction and Legal and Other  
24 Equitable Relief (“Consent”), which was filed simultaneously with this Final Judgment of  
25 Permanent Injunction and Legal and Other Equitable Relief (“Final Judgment”) and incorporated  
26 herein by reference. In the Consent, Phan admitted the jurisdiction of this Court over him and  
27 over the subject matter of this action, admitted that he was fully advised and informed of the  
28 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 Final

~~PROPOSED~~ FINAL JUDGMENT AGAINST SON D. PHAN  
C-01-21068-JW

1  
2 Judgment, without admitting or denying any of the allegations in the Complaint except as set  
3 forth in the Consent, and waived notice of hearing upon the entry of this Final Judgment. Good  
4 cause appearing, the court orders as follows:

5 I.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Phan, his agents,  
7 servants, employees, attorneys, and all persons acting in concert or participation with him, 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 10(b) of  
10 the Securities and Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5  
11 thereunder [17 C.F.R. § 240.10b-5] by:

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

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

16 C. engaging in any transaction, practice, or course of business which operates or  
17 would operate as a fraud or deceit upon any person, in connection with the purchase or sale of the  
18 securities of any issuer, by the use of any means or instrumentality of interstate commerce, or of  
19 the mails, or of any facility of any national securities exchange.

20 II.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Phan disgorge profits  
22 from his securities purchase that is the subject of this action in the amount of \$18,825.63, plus  
23 prejudgment interest in the amount of \$1,061.34. Payment of the disgorged amount and interest  
24 shall be made by cashier's check, certified check or postal money order payable to the United  
25 States Treasury in the name and to the credit of the registry of the United States District Court for  
26 the Northern District of California, within thirty (30) days of the entry of the Final Judgment.  
27

1  
2 Such payment shall be sent by certified mail to: Comptroller, Securities Exchange Commission,  
3 Operations Center, 6432 General Green Way, Alexandria, VA 22312-0003, under cover of a  
4 letter which identifies the defendant and the Commission's internal case number (SF-2366-A)  
5 and which references the following cases: S.E.C. v. Ken C. Chow, Jack C. Lau, and John C. Lin,  
6 Case No. C 01-21067-JW; S.E.C. v. Mark Apton, Rajiv Agrawal and Son D. Phan, Case No. C  
7 01-21068-JW; S.E.C. v. Robert J. Prevett, Wendy Goody, and Clifford D. Goody, Case No. C  
8 01-21069-JW; S.E.C. v. Geoffrey C. P. Chang, Case No. C 01-21070-JW; S.E.C. v. David  
9 Chang and Qwai Hoong Low, Case No. C 01-21071-JW; S.E.C. v. Evan Kong Lau, Case No. C  
10 01-21072-JW; and United States v. Atul Bhagat, Case No. CR 01-20173-JW. Copies of each of  
11 the cover letters shall be simultaneously transmitted to the attention of Helane Morrison, District  
12 Administrator, at the Commission's San Francisco District Office, 44 Montgomery Street, Suite  
13 1100, San Francisco, CA 94104.

14 III.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Phan pay a civil  
16 penalty pursuant to Section 21A(a)(1)(A) of the Exchange Act [15 U.S.C. § 78u-1(a)(1)(A)] in  
17 the amount of \$18,825.63. Payment of the penalty and postjudgment interest shall be made in  
18 four separate installments of \$4,769.01 by cashier's check, certified check or postal money order  
19 payable to the United States Treasury. The first installment shall be paid within ninety (90) days  
20 of the entry of the Final Judgment, with installments paid every following ninety (90) days  
21 thereafter until the entire penalty of \$18,825.63 and postjudgment interest of \$250.41 has been  
22 paid. Phan shall pay postjudgment interest, as calculated pursuant to 28 U.S.C. § 1961, on any  
23 amount of the penalty that remains outstanding after the scheduled time of payment set forth  
24 above. All payments shall be made by cashier's check, certified check or postal money order,  
25 payable to the United States Treasury. Such payments shall be sent by certified mail to:  
26 Comptroller, Securities Exchange Commission, Operations Center, 6432 General Green Way,  
27

Alexandria, VA 22312-0003, under cover of a letter which identifies the defendant, the caption and civil action number of this matter, this Court, and the Commission’s internal case number (SF-2366-A). Copies of each of the cover letters shall be simultaneously transmitted to the attention of the District Administrator at the Commission’s San Francisco District Office, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached Consent of Phan, filed concurrently with this Final Judgment, is incorporated herein with the same force and effect as if fully set forth herein and that Phan shall fully comply with all of the undertakings and agreements incorporated in both documents.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for the purpose 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. 11, 2002

/S/ JAMES WARE

United States District Court Judge

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven R. Manchester, Esq.  
Manchester, Williams & Seibert  
84 W. Santa Clara St., Suite 630  
San Jose, California 95113  
Telephone: (408) 287-6193  
Fax: (408) 287-1554  
Attorney for Son D. Phan

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

SUBMITTED BY:

---

Helane L. Morrison  
John S. Yun  
Michael S. Dicke  
Patrick Thomas Murphy

Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
44 Montgomery Street, Suite 1100  
San Francisco, California 94104