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U.S. DISTRICT COURT
NORTHERN DIST. OF CALIF. S.D.
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UNITED STATES DISTRICT COURT

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

FOR THE NORTHERN DISTRICT OF CALIFORNIA

C02 05613

Civil Action No.

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

RALPH K. UNGERMANN, ALAN J.
MCMILLAN, AND JAMES O.
MITCHELL,

Defendants.

FINAL JUDGMENT OF PERMANENT
INJUNCTION AND OTHER RELIEF
AGAINST JAMES O. MITCHELL

Plaintiff Securities and Exchange Commission ("Commission"), having filed and served upon Defendant James O. Mitchell ("Mitchell") a Summons and Complaint in this action; Mitchell having admitted service upon him of the Summons and Complaint in this action and the jurisdiction of this Court over him and over the subject matter of this action; having been fully advised and informed of his right to a judicial determination of this matter; having waived the entry of findings of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure; having consented to the entry of this Final Judgment Of Permanent Injunction And Other Relief Against James O. Mitchell ("Judgment") without admitting or denying the allegations in the Complaint, except as

- 1 A. employing any device, scheme, or artifice to defraud;
- 2 B. making any untrue statement of a material fact or omitting to state a
- 3 material fact necessary in order to make the statements made, in the
- 4 light of the circumstances under which they were made, not
- 5 misleading; or
- 6 C. engaging in any act, practice, or course of business which operates or
- 7 would operate as a fraud or deceit upon any person;

8 in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.

9 § 78j(b) (the "Exchange Act"), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

10 III.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mitchell

12 and his agents, servants, employees, and all persons in active concert or

13 participation with any of them, who receive actual notice of this Judgment, by

14 personal service or otherwise, and each of them, are permanently restrained and

15 enjoined from, directly or indirectly:

- 16 A. causing the failure to make and keep accurate books, records and
- 17 accounts which, in reasonable detail, accurately and fairly reflect
- 18 financial transactions and disposition of assets;
- 19 B. falsifying, or causing to be falsified books, records or accounts
- 20 subject to Section 13(b)(2)(A) of the Exchange Act; or
- 21 C. making or causing to be made, or causing another person to omit to
- 22 state, a materially false or misleading statement, or omitting to state a
- 23 material fact in order to make statements made, in light of the
- 24 circumstances under which such statements were made, not
- 25 misleading to an accountant in connection with (1) an audit or
- 26 examination of financial statements required to be made pursuant to
- 27 the Exchange Act regulations, or (2) the preparation or filing of
- 28

1 reports or documents required to be filed with the Commission
2 pursuant to Exchange Act regulations or otherwise;
3 in violation of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A),
4 and Rules 13b2-1 and 13b2-2 thereunder, 17 C.F.R. §§ 240.13b2-1 and
5 240.13b2-2.

6 IV.

7 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mitchell
8 shall pay disgorgement in the amount of \$102,737, representing ill-gotten gains as a
9 result of the conduct alleged in the Complaint, plus prejudgment interest in the amount
10 of \$19,140 and civil money penalties in the amount of \$102,737.

11 V.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that monies paid
13 pursuant to IV, above, of the Judgment shall be paid within 20 days of the entry of this
14 Judgment in the following manner:

15 (a) such monies shall be paid into this Court's registry by certified check or
16 money order drawn to the order of "Clerk, United States District Court for the
17 Northern District of California" whereupon the Clerk of this Court, or the Financial
18 Deputy Clerk, is hereby directed to deposit said certified check or money order into an
19 interest bearing account (the "Account") with the Court Registry Investment System
20 ("CRIS");

21 (b) Simultaneously with payment, Mitchell shall send copies of any certified
22 checks or money orders to counsel for the Commission at its Los Angeles office,
23 located at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036 under
24 cover identifying Mitchell as a defendant in this action, the case number of the action,
25 the name of the Court, and the Commission's file number [LA-1926];

26 (c) The Account shall be held by the CRIS until further order of the Court,
27 and distributed pursuant to a Court-approved plan to be proposed by motion of the
28 Commission, but in no event shall the monies paid revert, directly or indirectly, to

1 Mitchell, or his heirs or assigns. Such a plan may provide that monies in the Account
2 shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the
3 Sarbanes-Oxley Act of 2002;

4 (d) Interest earned on the Account shall be credited to the Account and shall
5 thereafter be treated in the same manner as principal; and

6 (e) The Clerk of the Court is directed to deduct from the income earned on
7 the investment a fee, not exceeding that authorized by the Judicial Conference of the
8 United States and set by the Director of the Administrative Office at or equal to 10%
9 of the income earned in the investment so held and without further order of the Court.

10 VI.

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

15 VII.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
17 shall retain jurisdiction over this action for all purposes, including to implement and
18 enforce the terms of this Judgment and other orders and decrees which may be entered,
19 and to grant such other relief as this Court may deem necessary and just.

20 VIII.

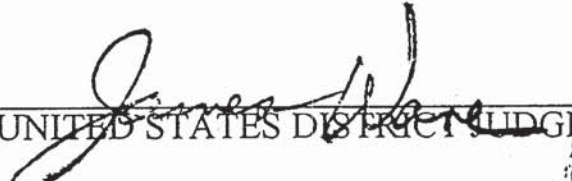
21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
22 during the pendency of this action against any defendant, Mitchell shall remain subject
23 to the discovery provisions of the Federal Rules of Civil Procedure which apply to
24 parties, and, in addition, that Mitchell agrees and undertakes, without service of a
25 subpoena, to appear for his deposition or to testify as a witness at any trial of this
26 action or at any related proceeding. Failure to comply with the foregoing will subject
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1 Mitchell to the remedies and sanctions set forth in Rule 37 of the Federal Rules of
2 Civil Procedure and all other available remedies.

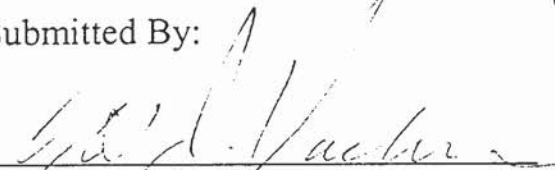
3 IX.

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

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7 DATED: December 3, 2002


UNITED STATES DISTRICT JUDGE

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9 Submitted By:

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12 Christyne J. Vachon
13 Attorney for Plaintiff
14 Securities and Exchange Commission
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