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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 05813

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
RALPH K. UNGERMANN

Plaintiff Securities and Exchange Commission ("Commission"), having filed and served upon Defendant Ralph K. Ungermann ("Ungermann") a Summons and Complaint in this action; Ungermann 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 Ralph K. Ungermann ("Judgment") without admitting or denying the allegations in the Complaint, except as specifically

1 set forth in the Consent Of Ralph K. Ungermann To Entry Of Final Judgment Of
2 Permanent Injunction And Other Relief (“Consent”); no notice of hearing upon the
3 entry of this Judgment being necessary; and this Court being fully advised:

4 I.

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

- 12 A. employing any device, scheme or artifice to defraud;
13 B. obtaining money or property by means of any untrue statement of a
14 material fact or any omission to state a material fact necessary in order
15 to make the statements made, in the light of the circumstances under
16 which they were made, not misleading; or
17 C. engaging in any transaction, practice, or course of business which
18 operates or would operate as a fraud or deceit upon the purchaser;
19 in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

20 II.

21 IT IS ORDERED, ADJUDGED, AND DECREED that Ungermann and his
22 agents, servants, employees and attorneys, and all persons in active concert or
23 participation with any of them, who receive actual notice of this Judgment by
24 personal service or otherwise, and each of them, are permanently restrained and
25 enjoined from, directly or indirectly, in connection with the purchase or sale of any
26 security, by the use of any means or instrumentality of interstate commerce, or of
27 the mails, or of any facility of any national securities exchange:
28

- 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
12 Ungermann and his agents, servants, employees, and all persons in active concert
13 or 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 reports
28 or documents required to be filed with the Commission pursuant to

1 Exchange Act regulations or otherwise;
2 in violation of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A),
3 and Rules 13b2-1 and 13b2-2 thereunder, 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2.

4 IV.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Ungermann
6 shall pay disgorgement in the amount of \$384,192, representing ill-gotten gains as a
7 result of the conduct alleged in the Complaint, plus prejudgment interest in the amount
8 of \$71,575 and civil money penalties in the amount of \$384,192.

9 V.

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

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

19
20 (b) Simultaneously with payment, Ungermann shall send copies of any
21 certified checks or money orders to counsel for the Commission at its Los Angeles
22 office, located at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036
23 under cover identifying Ungermann as a defendant in this action, the case number of the
24 action, the name of the Court, and the Commission's file number [LA-1926];

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

1 Account shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of
2 the Sarbanes-Oxley Act of 2002;

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

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

9 VI.

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

14 VII.

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

19 VIII.

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

IX.

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 Judgment.

DATED: 12/3/02


UNITED STATES DISTRICT JUDGE

Submitted By:


Christyne J. Vachon
Attorney for Plaintiff
Securities and Exchange Commission