

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION :
450 Fifth Street, N.W. :
Washington, DC 20549-0708, :

Plaintiff, :

v. :

BYRON R. LERNER, :

Defendant. :

Civil Action No. _____

FILED

JUN - 7 2002

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

FINAL JUDGMENT OF PERMANENT INJUNCTION
AND OTHER RELIEF AS TO BYRON R. LERNER

Plaintiff Securities and Exchange Commission ("Commission"), having filed its Complaint, and defendant Byron R. Lerner ("Lerner") having in his Consent of Byron R. Lerner ("Consent"), which was filed simultaneously with this Final Judgment of Permanent Injunction and Other Relief as to Byron R. Lerner ("Final Judgment") and incorporated herein by reference, entered a general appearance, admitted the jurisdiction of this Court over him and over the subject matter of this action, waived service of process, waived the filing of an Answer to the Complaint and the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, waived any right he might have to appeal from the entry of this Final Judgment, and, without admitting or denying any of the allegations of the Complaint except as to jurisdiction, which he admits, consented to the entry of this Final Judgment, and it appearing that this Court has jurisdiction over Lerner and over the subject matter hereof, and the Court being fully advised in the premises:

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I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Lerner, his agents, servants, employees, attorneys-in-fact, and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from violating Section 17(a) of the Securities Act by, directly or indirectly, using any means or instruments of transportation or communication in interstate commerce or by use of the mails, to:

- (1) employ any device, scheme or artifice to defraud;
- (2) obtain money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in the offer or sale of any securities.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lerner, his agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of a national securities exchange, Section 10(b) of the Securities Exchange Act of

1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by:

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

in connection with the purchase or sale of any security.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lerner, his agents, servants, employees, attorneys-in-fact, and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from aiding and abetting violations of Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder, by failing to file annual and quarterly reports in conformity with the Commission's integrated reporting and disclosure regulations, Regulations S-K and S-X, or by failing to include such further material information as may be necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lerner, his agents, servants, employees, attorneys-in-fact, and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and

each of them, be and they hereby are permanently restrained and enjoined from aiding and abetting violations of Section 13(b)(2)(A) of the Exchange Act by failing, with respect to any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act or which is required to file reports pursuant to Section 15(d) of the Exchange Act, to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Lerner, his agents, servants, employees, attorneys-in-fact and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from violating Rule 13b2-1 under the Exchange Act [17 C.F.R. 240.13b2-1] by, directly or indirectly, falsifying or causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lerner, his agents, servants, employees, attorneys-in-fact, and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from aiding and abetting violations of Section 13(b)(2)(B) of the Exchange Act by failing, with respect to any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act or which is required to file reports pursuant to Section 15(d) of the Exchange Act, to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- (1) transactions are executed in accordance with management's general or specific authorization;
- (2) transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets;
- (3) access to assets is permitted only in accordance with management's general or specific authorization; and
- (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lerner, his agents, servants, employees, attorneys-in-fact, and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them, be and they hereby are permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act by knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lerner shall pay disgorgement of \$78,000, representing all profits obtained as a result of the conduct alleged in the Complaint, plus prejudgment interest thereon of \$9,500.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lerner shall pay a civil penalty in the amount of \$50,000 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act, predicated on the acts alleged in the Complaint.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lerner shall pay the disgorgement, prejudgment interest and civil penalty of \$137,500 in four installments: (i) \$25,000 within ten (10) business days after entry of the Final Judgment; (ii) \$37,500 within 90 calendar days after entry of the Final Judgment; (iii) \$37,500 within 180 calendar days after entry of the Final Judgment; and (iv) \$37,500 within 270 calendar days after entry of the Final Judgment. Each payment shall be made by bank cashier's check, certified check, United States postal money order, or bank money order payable to the "Securities and Exchange Commission." Each payment shall be hand-delivered or mailed to the Office of the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312. Each payment shall be accompanied by a letter that identifies Lerner as the defendant on whose behalf the payment is being made, the caption and case number of this action, the name of this Court, and the Commission's internal file number for this matter (HO-8878). Copies of such check or money order and accompanying cover letter shall be simultaneously transmitted to Scott W. Friestad, Assistant Director, Securities and Exchange Commission, Division of Enforcement, 450 Fifth Street, N.W., Washington, D.C. 20549-0708.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Consent be, and hereby is, incorporated herein by reference with the same force and effect as if fully set forth

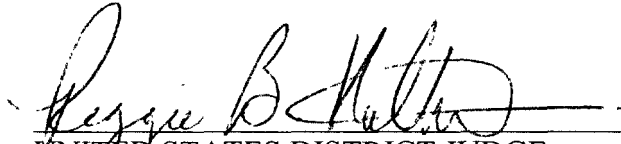
herein and that defendant Lerner shall fully comply with all of the undertakings and agreements incorporated herein.

XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Final Judgment.

XIII.

There being no just cause 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.


UNITED STATES DISTRICT JUDGE

Dated: *June 7, 2002*