

UNITED STATES DISTRICT COURT

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DISTRICT OF OREGON

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

J. KENNETH STRINGER III, J.
MARK SAMPER, WILLIAM N.
MARTIN, and STEVEN R.
EAGLEBURGER,

Defendants.

Civil Action No. 02-1341 ST

FINAL JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST
DEFENDANT J. MARK SAMPER

Plaintiff Securities and Exchange Commission (“Commission”), having filed and served upon Defendant J. Mark Samper (“Samper”) a Summons and Complaint in this action; Samper 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 J. Mark Samper (“Judgment”) without admitting or denying the allegations in the Complaint, except as specifically set forth in the Consent Of J. Mark Samper To Entry Of Final Judgment Of Permanent Injunction And Other Relief (“Consent”); no notice of hearing upon the entry of this Judgment being necessary; and this Court being fully advised:

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I.

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

- A. employing any device, scheme or artifice to defraud;
 - B. obtaining money or property by means of any untrue statement of a 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
 - C. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;
- in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

II.

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

- A. employing any device, scheme, or artifice to defraud;
- B. making any untrue statement of a material fact or omitting 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

- C. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (the “Exchange Act”), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

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

- A. causing the failure to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that financial statements are prepared in conformity with Generally Accepted Accounting Principles;
- B. falsifying or causing to be falsified books, records or accounts subject to Section 13(b)(2)(A) of the Exchange Act;
- C. making or causing to be made, or causing another person to omit or state, a materially false or misleading statement, or omitting to state a material fact in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) an audit or examination of financial statements required to be made pursuant to

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

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Samper and his agents, servants, employees and attorneys and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently restrained and enjoined from, directly or indirectly:

causing the filing of a required periodic report with the Commission containing any untrue statement of material fact or omitting to state a material fact required to be stated or necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13.

V.

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

causing the failure to make and keep accurate books, records, and accounts which, in reasonable detail, accurately and fairly reflect financial transactions and disposition of assets;

in violation of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

VI.

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

causing the failure to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that financial statements are prepared in conformity with Generally Accepted Accounting Principles;

in violation of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B).

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Samper, pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77u(d), and 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), shall pay civil penalties totaling \$110,000. Samper shall pay this penalty by cashier's check, certified check or postal money order within one year of the entry of this judgment. This payment shall be made payable to the United States Treasury and shall be transmitted to the Office of Financial Management, 6432 General Green Way, Stop 0-3, Alexandria,

Virginia 22312, under cover of a letter which identifies the defendant, the name and case number of this litigation and the name of the Court. A copy of the cover letter and check shall be simultaneously transmitted to counsel for the Commission at its Los Angeles office, located at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Samper shall pay disgorgement in the amount of \$52,500, representing his ill-gotten gains, plus prejudgment interest thereon in the amount of \$8,859. Samper shall pay the disgorgement and prejudgment interest within one year of entry of this Final Judgment by cashier's check, certified check or postal money order made payable to the United States Securities and Exchange Commission, which shall be transmitted to the Office of Financial Management, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312, under cover of a letter which identifies the defendant, the name and case number of this litigation and the name of the Court. A copy of the cover letter and check shall be simultaneously transmitted to counsel for the Commission at its Los Angeles office, located at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Samper be prohibited permanently, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

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X.

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

XI.

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

XII.

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

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XIII.

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: 10/1/02

Malcolm F. Marsh
UNITED STATES DISTRICT JUDGE

Submitted By:


Lorraine B. Echavarría
Attorney for Plaintiff
Securities and Exchange Commission