

1 JUAN MARCEL MARCELINO
FRANK C. HUNTINGTON
2 ELLEN E. BOBER
73 Tremont Street, Suite 600
3 Boston, MA 02108
Telephone: (617) 424-5900
4 Facsimile: (617) 424-5940

5 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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8 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

10
11 SECURITIES AND EXCHANGE COMMISSION,)

12 Plaintiff,

13 v.

Case No. C02-01467-PVT

14 DALE PETERSON,
15 RUSSELL KINSCH,
16 JAMES WALSH,
RICHARD NABOZNY,
17 MICHAEL SMITH,
CHARLES VALENTINE and
18 WAYNE ARMSTRONG,

FINAL JUDGMENT OF
PERMANENT INJUNCTION,
OFFICER AND DIRECTOR
BAR, CIVIL MONETARY
PENALTY AND OTHER
EQUITABLE RELIEF
AGAINST DEFENDANT
RUSSELL KINSCH

19 Defendants.)

20
21 Plaintiff Securities and Exchange Commission ("Commission"), having duly commenced this
22 action by filing its Complaint ("Complaint"), and Defendant Russell Kinsch ("Kinsch"), having entered
23 a general appearance in this action; having, in the annexed Consent of Defendant Russell Kinsch
24 ("Consent"), admitted to the jurisdiction of this Court over him and over the subject matter of this
25 action; having waived the entry of findings of fact and conclusions of law pursuant to [Fed. R. Civ. P.](#)
26 [52](#); having, without admitting or denying the allegations of the Complaint, except as to jurisdiction,
27 which he admits, consented to the entry of this Final Judgment of Permanent Injunction, Officer and
28 Director Bar, Civil Monetary Penalty and Other Equitable Relief Against Defendant Russell Kinsch

1 ("Final Judgment") permanently restraining and enjoining Defendant Kinsch from, directly or indirectly,
 2 violating Sections 10(b),13(a),13(b)(2)(A),13(b)(2)(B), and 13(b)(5) of the Securities Exchange
 3 Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j (b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and
 4 78m(b)(5)] and Exchange Act Rules IOB-5,12b-20,13 a-1,13a-13,13b2-1 and 13b2-2 [17 C.F.R.
 5 §§ 240.1Ob-5, 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1 and 240.13b2-2]; permanently
 6 barring Defendant Kinsch, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)],
 7 from serving as an officer or director of any issuer required to file reports with the Commission
 8 pursuant to Sections 12(b), 12(g) or 15(d) of the Exchange Act [15 U.S.C. §§781(b), 781(g) and
 9 78o(d)]; and ordering Defendant Kinsch to pay civil monetary penalties of \$50,000; having waived
 10 the filing of an Answer to the Complaint; having waived his right to appeal from this Final Judgment;
 11 having waived any rights under the Equal Access to Justice Act, the Small Business Regulatory
 12 Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of
 13 attorney's fees or other fees, expenses or costs expended by Defendant Kinsch to defend against this
 14 action and having agreed, for these purposes, that he is not the prevailing party in this action since the
 15 parties have reached a good faith settlement; and it further appearing that this Court has jurisdiction
 16 over Defendant Kinsch and the subject matter hereof, and the Court being fully advised in the
 17 premises.

18
 19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Kinsch,
 20 his agents, servants, employees, attorneys, successors and assigns and all persons in active concert
 21 or participation with them who receive actual notice of this Final Judgment by personal service or
 22 otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating
 23 Section 10(b) of the Exchange Act [15 U.S.C. § 78j (b)] and Rule IOB-5 [17 C.F.R. § 240.1 Ob-5]
 24 thereunder by, directly or indirectly, using any means or instrumentality of interstate commerce, or the
 25 mails, or any facility of any national securities exchange:

- 26 (a) to employ any device, scheme or artifice to defraud,
 27 (b) to make any untrue statement of a material fact or to omit to state a material fact
 28 necessary in order to make the statements made, in the light of the circumstances

1 under which they were made, not misleading, or
2 (c) to engage in any act, practice or course of business which operates or would operate
3 as a fraud or deceit upon any person,
4 in connection with the purchase or sale of any security.

5 II.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kinsch,
7 his agents, servants, employees, attorneys, successors and assigns and all persons in active concert
8 or participation with them who receive actual notice of this Final Judgment by personal service or
9 otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly
10 or indirectly, violating Section 13 (a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1,
11 13a-13 and 12b-20 thereunder [17 C.F.R. §§ 240.13a-1, 240.13a-13 and 240.12b-20] by allowing
12 any issuer of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 781] to fail to
13 file, in accordance with such rules and regulations as the Commission prescribes as necessary or
14 appropriate, such information and documents as the Commission requires to keep reasonably current
15 the information and documents required to be included in or filed with an application or registration
16 statement filed pursuant to Section 12 of the Exchange Act, or such annual and quarterly reports as
17 the Commission prescribes, including, but not limited to, annual reports on Form 10-K as prescribed
18 by Rule 13a-1 [17 C.F.R. § 240.13 a-1] and quarterly reports on Form 10-Q as prescribed by Rule
19 13a-13 [17 C.F.R. § 240.13a-13], and by failing to include, in addition to the information expressly
20 required to be included in any statement or report filed pursuant to Section 13(a) of the Exchange Act
21 [15 U.S.C. § 78m(a)] such further material information, if any, as may be necessary to make the
22 required statements, in light of the circumstances under which they are made, not misleading.

23 III.

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kinsch,
25 his agents, servants, employees, attorneys, successors and assigns and all persons in active concert
26 or participation with them who receive actual notice of this Final Judgment by personal service or
27 otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating
28 Sections 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by participating with an issuer

1 of securities registered under Section 12 of the Exchange Act, directly or indirectly, in the failure to
2 make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect
3 the transactions and dispositions of the issuer;

4 IV.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kinsch,
6 his agents, servants, employees, attorneys, successors and assigns and all persons in active concert
7 or participation with them who receive actual notice of this Final Judgment by personal service or
8 otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating
9 13(b)(2)(B) of the Exchange Act [15 U. S.C. §78m(b)(2)(B)] to fail to devise and maintain a system
10 of internal accounting controls sufficient to provide reasonable assurances that the issuer's transactions
11 are recorded as necessary to permit preparation of financial statements in conformity with generally
12 accepted accounting principles.

13 V.

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kinsch,
15 his agents, servants, employees, attorneys, successors and assigns and all persons in active concert
16 or participation with them who receive actual notice of this Final Judgment by personal service or
17 otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating
18 Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing
19 to implement a system of internal accounting controls or knowingly falsifying any book, record or
20 account or by, directly or indirectly, falsifying or causing to be falsified any book, record or account
21 of an issuer which has a class of securities registered with the Commission or which is required to file
22 reports with the Commission.

23
24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kinsch,
25 his agents, servants, employees, attorneys, successors and assigns and all persons in active concert
26 or participation with them who receive actual notice of this Final Judgment by personal service or
27 otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating
28 Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by, directly or indirectly, falsifying or causing

1 to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act

2 VII.

3 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Kinsch
4 and his agents, servants, employees, attorneys, successors or assigns, and those persons in active
5 concert or participation with them who receive actual notice of this Final Judgment by personal service
6 or otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating
7 Exchange Act Rule 13b2-2 [17 C.F.R. §240.13b2-2] by directly or indirectly, making or causing to
8 be made a materially false or misleading statement, or omitting to state, or causing another person to
9 omit to state, a material fact necessary in order to make statements made, in light of the circumstances
10 under which such statements were made, not misleading, to an accountant in connection with (i) an
11 audit or examination of the financial statements of an issuer required to be made or (ii) the preparation
12 or filing of a document or report required to be filed with the Commission.

13 VIII.

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kinsch
15 shall be barred permanently, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C.
16 §78u(d)(2)], from serving as an officer or director of any issuer required to file reports with the
17 Commission pursuant to Sections 12(b), 12(g) or 15(d) of the Exchange Act [15 U.S.C. §§781(b),
18 781(g) and 78o(d)].

19 IX.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kinsch
21 shall pay civil monetary penalties in the amount of \$50,000 pursuant to section 21(d)(3) of the
22 Exchange Act. Defendant Kinsch's payment of \$50,000 shall be: (1) made within thirty days of the
23 entry of this Final Judgment; (2) made by bank cashier's check, bank money order, certified check
24 or United States postal money order; (3) made payable to the Securities and Exchange Commission;
25 (4) mailed or hand-delivered to the Office of Financial Management, Securities and Exchange
26 Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia, 22312;
27 and (5) submitted under cover of a letter that identifies Russell Kinsch as the Defendant in this action,
28 the name and number of this action and name of this Court, with a copy to Frank C. Huntington, at

Kinsch Final Judgment
(C02-01467-PVT)

1 the Commission's Boston District Office located at Suite 600, 73 Tremont Street, Boston,
2 Massachusetts 02108.

3 X.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Kinsch
5 shall, at the Commission's request, provide discovery and testify at any deposition and at any judicial
6 or administrative proceeding brought by the Commission related to the Complaint or any allegations
7 therein and any continuing litigation or proceeding based thereon.

8 XI.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the annexed
10 Consent of Defendant Russell Kinsch be, and hereby is, incorporated by reference herein with the
11 same force and effect as if fully set forth herein.

12 XII.

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall
14 retain jurisdiction over Defendant Kinsch as a party to this matter for the purpose of implementing and
15 enforcing the terms and conditions of this Final Judgment.

16 XIII.

17 There being no just reason for delay, the Clerk of the Court is directed, pursuant to Fed. R.
18 Civ. P. 54(b), to enter this Final Judgment forthwith.

19
20 DONE AND ORDERED at *San Jose, CA* this *20th* day
21 of *June*, 200~~2~~³.

22
23
24 */s/ Patricia V. Trumbull*
Honorable Patricia V. Trumbull
United States Magistrate Judge