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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 NHCHAEL SMITH,
CHARLES BALENTINE and
18 WAYNE ARMSTRONG,

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

19 Defendants.
20

21 Plaintiff Securities and Exchange Commission ("Commission"), having duly commenced this
22 action by filing its Complaint ("Complaint"), and Defendant James Walsh ("Walsh"), having entered
23 a general appearance in this action; having, in the annexed Consent of Defendant James Walsh
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 James Walsh

1 ("Final Judgment") permanently restraining and enjoining Defendant Walsh 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, 13a-1, 13a-13 and 13b2-1 [17 C.F.R. §§
5 240.1 Ob-5, 240.12b-20, 240.13a-1, 240.13a-13 and 240.13b2-1]; permanently barring Defendant
6 Walsh, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)], from serving as
7 an officer or director of any issuer required to file reports with the Commission pursuant to Sections
8 12(b), 12(g) or 15(d) of the Exchange Act [15 U.S.C. §§781(b), 781(g) and 78o(d)]; and ordering
9 Defendant Walsh to pay civil monetary penalties of \$75,000; having waived the filing of an Answer
10 to the Complaint; having waived his right to appeal from this Final Judgment; having waived any rights
11 under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of
12 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses
13 or costs expended by Defendant Walsh to defend against this action and having agreed, for these
14 purposes, that he is not the prevailing party in this action since the parties have reached a good faith
15 settlement; and it further appearing that this Court has jurisdiction over Defendant Walsh and the
16 subject matter hereof, and the Court being fully advised in the premises.

17 I.

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Walsh,
19 his agents, servants, employees, attorneys, successors and assigns and all persons in active concert
20 or participation with them who receive actual notice of this Final Judgment by personal service or
21 otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating
22 Section 10(b) of the Exchange Act [15 U.S.C. § 78j (b)] and Rule 1 Ob-5 [17 C.F.R. § 240.1Ob-5]
23 thereunder by, directly or indirectly, using any means or instrumentality of interstate commerce, or the
24 mails, or any facility of any national securities exchange:

- 25 (a) to employ any device, scheme or artifice to defraud,
26 (b) to make any untrue statement of a material fact or to omit to state a material fact
27 necessary in order to make the statements made, in the light of the circumstances
28 under which they were made, not misleading, or

1 (c) to engage in any act, practice or course of business which operates or would operate
2 as a fraud or deceit upon any person,
3 in connection with the purchase or sale of any security.

4 II.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Walsh,
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, directly
9 or indirectly, violating Section 13 (a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1,
10 13a-13 and 12b-20 thereunder [17 C.F.R. §§ 240.13a-1, 240.13a-13 and 240.12b-20] by allowing
11 any issuer of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 781] to fail to
12 file, in accordance with such rules and regulations as the Commission prescribes as necessary or
13 appropriate, such information and documents as the Commission requires to keep reasonably current
14 the information and documents required to be included in or filed with an application or registration
15 statement filed pursuant to Section 12 of the Exchange Act, or such annual and quarterly reports as
16 the Commission prescribes, including, but not limited to, annual reports on Form 10-K as prescribed
17 by Rule 13a-1 [17 C.F.R. § 240.13 a-1] and quarterly reports on Form 10-Q as prescribed by Rule
18 13a-13 [17 C.F.R. § 240.13 a-13], and by failing to include, in addition to the information expressly
19 required to be included in any statement or report filed pursuant to Section 13 (a) of the Exchange Act
20 [15 U.S.C. § 78m(a)] such further material information, if any, as may be necessary to make the
21 required statements, in light of the circumstances under which they are made, not misleading.

22 III.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Walsh,
24 his agents, servants, employees, attorneys, successors and assigns and all persons in active concert
25 or participation with them who receive actual notice of this Final Judgment by personal service or
26 otherwise, and each of them, be and hereby are permanently restrained and enjoined from violating
27 Sections 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by participating with an issuer
28 of securities registered under Section 12 of the Exchange Act, directly or indirectly, in the failure to

1 make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect
2 the transactions and dispositions of the issuer;

3 IV.

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

12 V.

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

22 VI.

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

VII.

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

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Walsh shall pay civil monetary penalties in the amount of \$75,000 pursuant to section 21(d)(3) of the Exchange Act. Defendant Walsh's payment of \$75,000 shall be as follows: (1) the \$75,000 shall be paid in four payments; the first payment of \$30,000 is to be made within 30 days of the entry of this Final Judgment; the second payment of \$15,000 is to be made within 112 days of the first payment; the third payment of \$15,000 is to be made within 112 days of the second payment; and the final payment of \$15,000 is to be made within 111 days of the third payment, such that the entire \$75,000 is paid within one year of the entry of this Final Judgment; (2) made by bank cashier's check, bank money order, certified check or United States postal money order; (3) made payable to the Securities and Exchange Commission; (4) mailed or hand-delivered to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia, 22312; and (5) submitted under cover of a letter that identifies James Walsh as the Defendant in this action, the name and number of this action and name of this Court, with a copy to Frank C. Huntington, at the Commission's Boston District Office located at Suite 600, 73 Tremont Street, Boston, Massachusetts 02108.

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

X.

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

XI.

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

XII.

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

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

/s/ Patricia V. Trumbull
Honorable Patricia V. Trumbull
United States Magistrate Judge