

ORIGINAL

FILED LODGED
 RECEIVED COPY
 DEC 31 2003
 CLERK U.S. DISTRICT COURT
 DISTRICT OF ARIZONA
 BY _____ C DEPUTY

FILED LODGED
 RECEIVED COPY
 JAN 06 2004
 CLERK U.S. DISTRICT COURT
 DISTRICT OF ARIZONA
 BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA
 PHOENIX DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

IRA J. GAINES, Individually and doing
 business as WRIGLEY DRIVE PARTNERS and
 MORTEN AVENUE PARTNERS,

Defendant.

CASE NO.
 CIV02-1685 PHX (PGR)

AGREED FINAL JUDGMENT AS TO
DEFENDANT IRA J. GAINES

The Securities and Exchange Commission having filed a *Complaint* and
 Defendant Ira J. Gaines ("Defendant") having answered it; consented to the Court's
 jurisdiction over Defendant and the subject matter of this action; consented to entry of
 this *Agreed Final Judgment* without admitting or denying the allegations of the
Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and
 waived any right to appeal from this *Agreed Final Judgment*:

21

I.

1
2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant
3 and his agents, servants, employees, attorneys, and all persons in active concert or
4 participation with him who receive actual notice of this *Agreed Final Judgment* by
5 personal service or otherwise are permanently restrained and enjoined from violating,
6 directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange
7 Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-
8 5], by using any means or instrumentality of interstate commerce, or of the mails, or of
9 any facility of any national securities exchange, in connection with the purchase or sale
10 of any security:

- 11 (a) to employ any device, scheme, or artifice to defraud;
- 12 (b) to make any untrue statement of a material fact or to omit to state a
13 material fact necessary in order to make the statements made, in the
14 light of the circumstances under which they were made, not
15 misleading; or
- 16 (c) to engage in any act, practice, or course of business which operates
17 or would operate as a fraud or deceit upon any person.
- 18
19
20
21
22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this *Agreed Final Judgment* by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-1 [17 C.F.R. § 240.14e-1] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from (a) making untrue statements of material fact, or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (b) engaging in fraudulent, deceptive or manipulative acts or practices.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this *Agreed Final Judgment* by personal service or otherwise are permanently restrained and enjoined from directly or indirectly, offering, making or engaging in a mini-tender offer, which is defined as an offer for less than five percent of a public company's equity securities that are not subject to the disclosure and procedural rules that apply to other types of tender offers. The above language does not pertain to offers to purchase bonds or limited partnerships.

1
2 **IV.**

3 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
4 Defendant is liable for disgorgement of \$63,810, representing profits gained as a result of
5 the conduct alleged in the *Complaint*, together with prejudgment interest thereon in the
6 amount of \$8,603, for a total of \$72,413. Defendant shall satisfy this obligation by
7 paying \$72,413, within ten (10) business days after entry of this *Agreed Final Judgment*
8 by certified check, bank cashier's check, or United States postal money order payable to
9 the Securities and Exchange Commission. The payment shall be delivered or mailed to
10 the Office of Financial Management, Securities and Exchange Commission, Operations
11 Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall
12 be accompanied by a letter identifying Ira J. Gaines as a defendant in this action; setting
13 forth the title and civil action number of this action and the name of this Court; and
14 specifying that payment is made pursuant to this *Agreed Final Judgment*.

15 **V.**

16 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant
17 shall pay a civil penalty in the amount of \$50,000 pursuant to Section 21(d) of the
18 Exchange Act [15 U.S.C. §78u(d)]. Defendant shall make this payment within ten (10)
19 business days after entry of this *Agreed Final Judgment* by certified check, bank cashier's
20 check, or United States postal money order payable to the Securities and Exchange
21 Commission. The payment shall be delivered or mailed to the Office of Financial
22 Management, Securities and Exchange Commission, Operations Center, 6432 General

1 Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a
2 letter identifying Ira J. Gaines as a defendant in this action; setting forth the title and civil
3 action number of this action and the name of this Court; and specifying that payment is
4 made pursuant to this *Agreed Final Judgment*.

5 **VI.**

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
7 incorporated herein with the same force and effect as if fully set forth herein, and that
8 Defendant shall comply with all of the undertakings and agreements set forth therein.

9 **VII.**

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
11 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
12 *Agreed Final Judgment*.

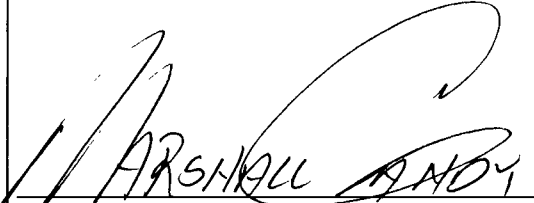
13 **VIII.**

14 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules
15 of Civil Procedure, the Clerk is ordered to enter this *Agreed Final Judgment* forthwith
16 and without further notice.

17
18 Dated this 5th day of Jan, 2004.

19
20 
21 PAUL G. ROSENBLATT
22 UNITED STATES DISTRICT JUDGE

1 APPROVED AS TO FORM AND CONTENT:

2
3
4 


MARSHALL GANDY
Texas Bar No. 07616500
Attorney for Plaintiff
5 UNITED STATES SECURITIES AND
6 EXCHANGE COMMISSION
7 Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
8 Fort Worth, Texas 76102-6882
Telephone: (817) 978-6464
9 Facsimile: (817) 978-4927

10
11
12
13
14
15
16
17
18
19
20
21
22

ALAN S. BASKIN
Arizona Bar No. 013155
Attorney for Defendant
Ira J. Gaines,
individually and doing business as,
Wrigley Drive Partners and
Morten Avenue Partners
Roshka Heyman & DeWulf PLC
400 East Van Buren Suite 800
Phoenix, AZ 85004-2262
Telephone: (602) 256-6100
Facsimile: (602) 256-6800

1 APPROVED AS TO FORM AND CONTENT:
2
3
4

MARSHALL GANDY
5 Texas Bar No. 07616500
Attorney for Plaintiff
6 UNITED STATES SECURITIES AND
EXCHANGE COMMISSION
7 Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
8 Fort Worth, Texas 76102-6882
Telephone: (817) 978-6464
9 Facsimile: (817) 978-4927

10
11
12 
ALAN S. BASKIN
13 Arizona Bar No. 013155
Attorney for Defendant
14 Ira J. Gaines,
individually and doing business as,
15 Wrigley Drive Partners and
Morten Avenue Partners

16 Roshka Heyman & DeWulf PLC
17 400 East Van Buren Suite 800
Phoenix, AZ 85004-2262
18 Telephone: (602) 256-6100
Facsimile: (602) 256-6800
19
20
21
22