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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

02-7471

SVW (RZx)

SECURITIES AND EXCHANGE
COMMISSION,

Civil Action No.

Plaintiff,

**FINAL JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST
DEFENDANT JOHN R.
DESIMONE**

vs.

JOHN GIESECKE JR., JOSEPH J.
SHEW, AND JOHN R. DESIMONE,

Defendants.

ENTERED
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Plaintiff Securities and Exchange Commission ("Commission"), having filed and served upon Defendant John R. DeSimone ("DeSimone") a Summons and Complaint in this action; DeSimone 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 John R. DeSimone ("Judgment") without admitting or denying the allegations in the Complaint, except as specifically set forth in the Consent Of John R. DeSimone To Entry Of Final

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1 Judgment Of Permanent Injunction And Other Relief (“Consent”); no notice of
2 hearing upon the entry of this Judgment being necessary; and this Court being
3 fully advised:

4 I.

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

- 12 A. employing any device, scheme or artifice to defraud;
13 B. obtaining money or property by means of any untrue statement of a
14 material fact or any omission to state a material fact necessary in
15 order to make the statements made, in the light of the circumstances
16 under which they were made, not misleading; or
17 C. engaging in any transaction, practice, or course of business which
18 operates or would operate as a fraud or deceit upon the purchaser;
19 in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

20 II.

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

- 3 A. employing any device, scheme, or artifice to defraud;
- 4 B. making any untrue statement of a material fact or omitting to state a
5 material fact necessary in order to make the statements made, in the
6 light of the circumstances under which they were made, not
7 misleading; or
- 8 C. engaging in any act, practice, or course of business which operates or
9 would operate as a fraud or deceit upon any person;

10 in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.
11 § 78j(b) (the "Exchange Act"), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

12 III.

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

- 20 A. causing the failure to devise and maintain a system of internal
21 accounting controls sufficient to provide reasonable assurances that
22 financial statements are prepared in conformity with Generally
23 Accepted Accounting Principles;
- 24 B. falsifying or causing to be falsified books, records or accounts subject
25 to Section 13(b)(2)(A) of the Exchange Act;
- 26 C. making or causing to be made, or causing another person to omit or
27 state, a materially false or misleading statement, or omitting to state a
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1 material fact in order to make statements made, in light of the
2 circumstances under which such statements were made, not
3 misleading to an accountant in connection with (1) an audit or
4 examination of financial statements required to be made pursuant to
5 the Exchange Act regulations, or (2) the preparation or filing of
6 reports or documents required to be filed with the Commission
7 pursuant to Exchange Act regulations or otherwise;

8 in violation of Section 13(b)(5) of the Exchange Act, 15 U.S.C., § 78m(b)(5), and
9 Rules 13b2-1 and 13b2-2 thereunder, 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2.

10 IV.

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

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

21 in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules
22 12b-20 and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20 and 240.13a-13.

23 V.

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

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

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

8 § 78m(b)(2)(A).

9 VI.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
11 Defendant DeSimone shall pay disgorgement in the amount of \$169,781,
12 representing his gains from the exercise of stock options, and pay prejudgment
13 interest in the amount of \$8,014.12. DeSimone shall pay the disgorgement and
14 prejudgment interest within one hundred and eighty (180) days of entry of this
15 Final Judgment to the Registry of this Court pending further Order, under cover of
16 a letter that identifies Defendant DeSimone, the caption and case number of this
17 action, and the name of this Court. Such payment shall be made by cashier's
18 check, certified check or postal money order made payable to "Clerk, U.S. District
19 Court." A copy of the form of payment and the accompanying letter shall
20 simultaneously be transmitted to counsel for the Commission at its Los Angeles
21 office, located at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

22 VII.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DeSimone
24 be prohibited for the period of ten years, pursuant to Section 21(d)(2) of the Exchange
25 Act, 15 U.S.C. § 78u(d)(2), from acting as an officer or director of any issuer that has
26 a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C.
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1 § 781, or that is required to file reports pursuant to Section 15(d) of the Exchange Act,
2 15 U.S.C. § 78o(d).

3 VIII.

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

8 IX.

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

13 X.

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

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XI.

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: 9/26/02


UNITED STATES DISTRICT JUDGE

Submitted By:



Jessica Rigley Marren
Attorney for Plaintiff
Securities and Exchange Commission