

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DAVID ANDREW HILTON and  
STEPHEN SCOTT LOWBER,

Defendants.

Case No. C 03-2511-Z

~~PROPOSED~~ FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER  
EQUITABLE AND STATUTORY RELIEF AGAINST DEFENDANT STEPHEN  
SCOTT LOWBER

Plaintiff United States Securities and Exchange Commission ("Commission") has  
filed its Complaint for Permanent Injunction and Other Equitable and Statutory Relief  
("Complaint") in this action. Defendant Stephen Scott Lowber ("Lowber"), who was  
represented by counsel, has submitted the Consent of Stephen Scott Lowber to Entry of Final  
Judgment of Permanent Injunction and Other Equitable And Statutory Relief ("Consent"),  
which was filed simultaneously with this [Proposed] Final Judgment of Permanent

1 Injunction and Other Equitable And Statutory Relief Against Defendant Stephen Scott  
2 Lowber ("Final Judgment") and incorporated herein by reference. In the Consent, Lowber  
3 waived service of the Summons and the Complaint, admitted the jurisdiction of this Court  
4 over him and over the subject matter of this action, admitted that he was fully advised and  
5 informed of the right to a judicial determination of this matter, waived findings of fact and  
6 conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure,  
7 consented to the entry of this Final Judgment, without admitting or denying any of the  
8 allegations in the Complaint except as set forth in the Consent, and waived notice of hearing  
9 upon the entry of this Final Judgment. The Court, being fully advised, orders as follows:

10 I.

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that  
12 Lowber, his agents, servants, employees, attorneys, and all those persons in active concert  
13 and participation with them who receive actual notice of this Final Judgment by personal  
14 service or otherwise, and each of them, are permanently enjoined and restrained from,  
15 directly or indirectly, violating Section 10(b) of the Securities Exchange Act of 1934  
16 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder  
17 by:

- 18 (1) employing any device, scheme, or artifice to defraud,  
19 (2) making any untrue statement of a material fact or omitting to state a material  
20 fact necessary in order to make the statements made, in the light of the  
21 circumstances under which they were made, not misleading, or  
22 (3) engaging in any transaction, act, practice, or course of business which  
23 operates or would operate as a fraud or deceit on any person,  
24 in connection with the purchase or sale of any securities of any issuer by the use of any  
25 means or instrumentality of interstate commerce, or of the mails, or of any facility of any  
26 national securities exchange.

## II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Lowber, his agents, servants, employees, attorneys, and all those persons in active concert and participation with them who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-1 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1] by knowingly providing substantial assistance to an issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] in failing to file with the Commission such accurate and complete information, reports, and documents as are required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the Commission's Rules thereunder, including but not limited to, annual reports on Form 10-K [17 C.F.R. § 249.310] as prescribed by Commission Rule 13a-1 [17 C.F.R. § 240.13a-1] and quarterly reports on Form 10-Q [17 C.F.R. § 249.308a] as prescribed by Commission Rule 13a-13 [17 C.F.R. § 240.13a-13], such information and documents to contain, in addition to such information as is expressly required to be included in a statement or report to the Commission, such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading, as prescribed by Commission Rule 12b-20 [17 C.F.R. § 240.12b-20].

## III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Lowber, his agents, servants, employees, attorneys, and all those persons in active concert and participation with them who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from aiding and abetting any violation of Section 13(B)(2)(A) of the Exchange Act [15 U.S.C. §

1 78m(b)(2)(A)] by causing any issuer which has a class of securities registered pursuant to  
2 Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15  
3 U.S.C. § 78o] to fail to make or keep books, records or accounts, which, in reasonable detail,  
4 accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

5 IV.

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Lowber, his  
7 agents, servants, employees, attorneys, and all those persons in active concert and  
8 participation with them who receive actual notice of this Final Judgment, by personal service  
9 or otherwise, and each of them, are permanently enjoined and restrained from from aiding  
10 and abetting any violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §  
11 78m(b)(2)(B)] by causing any issuer which has a class of securities registered pursuant to  
12 Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15  
13 U.S.C. § 78o] to fail to devise and maintain a system of internal accounting controls  
14 sufficient to provide reasonable assurances that:

15 A. transactions are executed in accordance with management's general or  
16 specific authorization;

17 B. transactions are recorded as necessary (i) to permit preparation of  
18 financial statements in conformity with generally accepted accounting principles or any other  
19 criteria applicable to such statements, and (ii) to maintain accountability for assets;

20 C. access to assets is permitted only in accordance with management's  
21 general or specific authorization; and

22 D. the recorded accountability for assets is compared with the existing  
23 assets at reasonable intervals and appropriate action is taken with respect to any differences.

24 V.

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Lowber and his  
26 agents, servants, employees, attorneys-in-fact, and all persons in active concert or  
27

1 participation with any of them, who receive actual notice of this Final Judgment, by personal  
2 service or otherwise, and each of them, are permanently enjoined and restrained from,  
3 directly or indirectly, violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]  
4 by knowingly circumventing or failing to implement a system of internal accounting controls  
5 or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the  
6 Exchange Act [15 U.S.C. § 78m(b)(2)].

7 VI.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lowber and his  
9 agents, servants, employees and attorneys-in-fact, and all persons acting in concert or  
10 participation with any of them, who receive actual notice of this Final Judgment by personal  
11 service or otherwise, and each of them, are permanently enjoined and restrained from,  
12 directly or indirectly, violating Rule 13b2-1 under the Exchange Act [17 C.F.R. §  
13 240.13b2-1] by falsifying or causing to be falsified any book, record or account subject to  
14 Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

15 VII.

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lowber and his  
17 agents, servants, employees, attorneys-in-fact, and all persons in active concert or  
18 participation with any of them, who receive actual notice of this Final Judgment, by personal  
19 service or otherwise, and each of them, are permanently enjoined and restrained from  
20 violating Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2] by making or causing to  
21 be made a materially false or misleading statement, or by omitting to state or causing another  
22 person to omit to state, any material fact necessary in order to make statements made, in light  
23 of the circumstances under which such statements were made, not misleading, to an  
24 accountant in connection with (A) any audit or examination of the financial statements of an  
25 issuer required to be made pursuant to the federal securities laws or (B) the preparation or  
26 filing of any document or report required to be filed with the Commission pursuant to the

1 federal securities laws or otherwise.

2 VIII.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to  
4 Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Lowber is prohibited from  
5 acting as an officer or director of any issuer that has a class of securities registered pursuant  
6 to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant  
7 to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

8 IX.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Lowber shall pay a  
10 civil penalty in the amount of \$50,000 pursuant to Section 21(d)(3) of the Exchange Act.  
11 Payment of the penalty shall be made no later than thirty days after the date of entry of this  
12 Final Judgment by certified check, bank cashier's check, or United States postal money order  
13 payable to the Securities and Exchange Commission. Lowber shall pay postjudgment  
14 interest, as calculated pursuant to 28 U.S.C. § 1961, on any amount of these penalties that  
15 remain outstanding thirty days after the entry of this Final Judgment. The payment shall be  
16 delivered or mailed to the Office of Financial Management, Securities and Exchange  
17 Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria,  
18 Virginia 22312, and shall be accompanied by a letter identifying Lowber as a defendant in  
19 this action; setting forth the title and civil action number of this action and the name of this  
20 Court; and specifying that payment is made pursuant to this Final Judgment. A copy of the  
21 cover letter and payment shall be simultaneously transmitted to the attention of the District  
22 Administrator at the Commission's San Francisco District Office, 44 Montgomery Street,  
23 Suite 1100, San Francisco, CA 94104.

24 X.

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

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this action for the purposes of enforcing the terms of this Final Judgment.

VI.

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

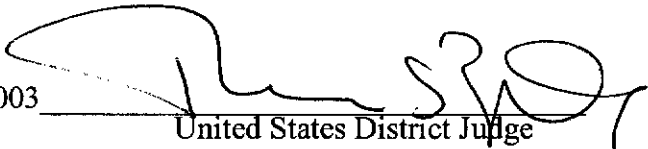
PRESENTED BY:

/s  
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APPROVED AS TO FORM:

/s  
Susan Resley, Esq.  
Gray Cary Ware & Freidenrich LLP  
Counsel for Defendant Stephen Scott Lowber

Dated this 29<sup>th</sup> day of Aug, 2003

  
United States District Judge