

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
SECURITIES AND EXCHANGE )  
COMMISSION, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
JACK CALVIN, Individually, )  
JACK CALVIN )  
d/b/a GROWTH BENEFIT SYSTEMS, )  
BYRON NERNOFF, )  
JAMES PROFFITT, )  
DAN WAYNE ADAMS, and )  
CHARLES TIMSON, )  
) )  
Defendants. )  
) )  
-and- )  
) )  
SHANNON CALVIN, )  
) )  
Relief Defendant. )  
\_\_\_\_\_ )

Civil Action No. 03CV10586MEL

**[AMENDED PROPOSED] FINAL JUDGMENT BY  
DEFAULT AGAINST DEFENDANT CHARLES TIMSON**

Plaintiff Securities and Exchange Commission ("SEC"), having filed a Complaint, and Defendant Timson having failed to appear, plead or otherwise defend in this action, and his default having been entered, and it appearing that this Court has jurisdiction over the subject matter of this action and over Defendant Timson; and the Court having considered the SEC's motion for a default judgment, and all the pleadings and evidence submitted in support thereof; and being fully advised in the premises:

Upon review of the evidence submitted by the SEC on the amount of disgorgement, this Court finds that: Defendant Timson received ill-gotten gains totaling at least \$58,151.

Upon review of the evidence submitted by the SEC on the amount of prejudgment interest calculated on disgorgement, this Court finds that the use of interest rates established quarterly by the Internal Revenue Service for money owed to the United States Treasury is reasonable. Accordingly, this Court finds that: prejudgment interest on the disgorgement amount of \$58,151 entered herein against defendant Timson totals \$9,667.25.

Upon review of the evidence submitted by the SEC on the imposition of a civil penalty, this Court finds that Defaulting Defendant Timson's violations of the federal securities laws involve fraud, and that the violations directly resulted in substantial losses to investors. This Court further finds that, based upon all the facts and circumstances as set forth in the SEC's submissions herein, the civil penalty imposed below against Defaulting Defendant Timson is appropriate.

Upon review of the evidence submitted by the SEC, this Court finds that Defaulting Defendant Timson is not an infant or incompetent person or in the military service of the United States.

I.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Timson, his agents, servants, employees and attorneys-in-fact, and those persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, including by facsimile transmission or overnight delivery service, and each of them, are permanently restrained and enjoined from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17

C.F.R. § 240.10b-5], directly or indirectly, by the use of the means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- (a) to employ any device, scheme or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

## II.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Timson, his agents, servants, employees and attorneys-in-fact, and those persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, including by facsimile transmission or overnight delivery service, and each of them, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], directly or indirectly, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails:

- (a) to employ any device, scheme or artifice to defraud;
- (b) to obtain any money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

**III.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Timson, his agents, servants, employees and attorneys-in-fact, and those persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, including by facsimile transmission or overnight delivery service, and each of them, are permanently restrained and enjoined from violating Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)] by, directly or indirectly, in the absence of any applicable exemption:

- (a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of a prospectus or otherwise, unless a registration statement is in effect as to such security;
- (b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any security for the purpose of sale or for delivery after sale, unless a registration statement is in effect as to such security; or
- (c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of a prospectus or otherwise, any security, unless a registration statement has been filed as to such security, or while a registration statement as to such security is the subject of a refusal order or stop order or (prior to the effective date of the registration statement)

any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

**IV.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Timson, his agents, servants, employees and attorneys-in-fact, and those persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise, including by facsimile transmission or overnight delivery service, and each of them, are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by, directly or indirectly, effecting securities transactions for the account of others or engaging in business as a dealer without being registered a broker-dealer or being associated with a registered broker-dealer for purposes of those transactions or that business.

**V.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that any financial or brokerage institution or other person or entity holding any funds or securities in the name, for the benefit, or under the direct or indirect control of Defendant Charles Timson shall deposit to the Registry of this Court such funds or the liquidated market value of such securities, immediately upon service of this Final Judgment upon them, by personal service or otherwise, including by facsimile transmission or overnight delivery.

**VI.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is liable for disgorgement of \$58,151, representing profits gained as a result of the conduct alleged in the

*WST*  
Complaint, together with prejudgment interest thereon in the amount of \$9,667.25, and a civil penalty in the amount of \$ ~~2,500,000~~ <sup>2,500,000</sup> pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 20(d)(2) of the Securities Act [15 U.S.C. § 771(d)(2)]. Defendant shall satisfy this obligation by paying \$ ~~2,500,000~~ <sup>2,500,000</sup> within ten business days to the Clerk of this Court, together with a cover letter identifying Charles Timson as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the

deterrent effect of the civil penalty, Defendant shall not, in any Related Investor Action, benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor in this action that is proportionately attributable to the civil penalty paid by Defendant ("Penalty Offset"). If the court in any Related Investor Action grants such an offset or reduction, Defendant shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

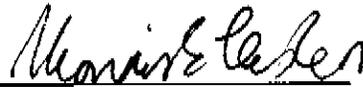
**VII.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this Final Judgment.

**VIII.**

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 Final Judgment forthwith.

DONE AND ORDERED at Boston this 9 day of Sept, 2003.



Morris Lasker  
Morris Lasker  
United States District Judge