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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

SECURITIES AND EXCHANGE COMMISSION,

Case No. C03-2646C

*Plaintiff,*

FINAL JUDGMENT AS TO DEFENDANT  
KENNETH R. MARTIN

v.

TERRY RICHARD MARTIN, SILVER LEGACY CORPORATION, SILVER SOUND LLC, JONAS DAVID SMITH, MICHAEL W. MCCALL, CHARLES J. TULL, IBIS SECURITIES LLC, KENNETH R. MARTIN, GEORGE TAMURA, GOLDMAN SIG INC., EDWARD L. TEZAK, SIGNAL MORTGAGE, INC., and JOHN H. WHITE,

*Defendants.*

This matter comes before the Court on Plaintiff Securities and Exchange Commission (“Commission”)’s Application for Entry of Consent Judgment Pursuant to Settlement as to Defendant Kenneth R. Martin (Dkt. No. 94). Defendant J. David Smith filed an Opposition (Dkt. No. 96) to Plaintiff’s request in its Application to lift the stay of proceedings in this case for the limited purpose of entering a consent judgment against Defendant Kenneth R. Martin. Plaintiffs replied (Dkt. No. 97). This Court has considered Defendant J. David Smith’s objections to entry of a judgment against Defendant Kenneth R. Martin and determined that such objections are meritless.

Plaintiff has filed its Complaint in this action against defendant Kenneth R. Martin (“Martin”) and others. Martin has entered a general appearance and submitted a Consent of Kenneth R. Martin to Entry of Final Judgment (“Consent”), which was filed simultaneously with this Final Judgment As To Defendant Kenneth R. Martin (“Final Judgment”). In the Consent,

1 Martin waived service of the Summons and the Complaint, admitted the jurisdiction of this Court  
2 over him and over the subject matter of this action, admitted that he was fully advised and  
3 informed of the right to a judicial determination of this matter, waived findings of fact and  
4 conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure, consented to  
5 the entry of this Final Judgment, without admitting or denying any of the allegations in the  
6 Complaint except as set forth in the Consent, and waived notice of hearing upon the entry of this  
7 Final Judgment. The Court, being fully advised in the premises, orders as follows.

8 I.

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

- 15 1. employing any device, scheme, or artifice to defraud;
- 16 2. making any untrue statement of a material fact or omitting to state a material fact  
17 necessary in order to make the statements made, in the light of the circumstances  
18 under which they were made, not misleading; or
- 19 3. engaging in any act, practice, or course of business which operates or would  
20 operate as a fraud or deceit upon any person;

21 in connection with the purchase or sale of the securities of any issuer, by the use of any means or  
22 instrumentality of interstate commerce, or of the mails, or of any facility of any national securities  
23 exchange.

24 II.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Martin and his  
26 agents, servants, employees, and all persons acting in concert or participation with any of them,  
27 who receive actual notice of this Final Judgment, by personal service or otherwise, and each of  
28 them, are permanently enjoined and restrained from violating Section 17(a) of the Securities Act

1 [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of  
2 transportation or communication in interstate commerce or by use of the mails, directly or  
3 indirectly:

- 4 1. to employ any device, scheme, or artifice to defraud;
- 5 2. to obtain money or property by means of any untrue statement of a material fact or  
6 any omission of a material fact necessary in order to make the statements made, in  
7 light of the circumstances under which they were made, not misleading; or
- 8 3. to engage in any transaction, practice, or course of business which operates or  
9 would operate as a fraud or deceit upon the purchaser.

10 III.

11 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
12 Martin disgorge all gains he received as a result of the conduct alleged in the Complaint, together  
13 with pre-judgment interest. This obligation shall be satisfied by Martin's completion of the  
14 Chapter 13 plan in In re Kenneth Robert Martin, Case No. 03-41037 in the United States  
15 Bankruptcy Court for the Northern District of California ("Bankruptcy Case"), in which case the  
16 commission has an allowed claim in the amount of \$67,400. Based upon the plan for payment of  
17 creditors approved by the Bankruptcy Court in that Case, the Court is not ordering Defendant to  
18 pay a civil penalty or to pay disgorgement in excess of \$67,400. If at any time following the entry  
19 of the Final Judgment, the Bankruptcy Case is dismissed or converted to a case under Chapter 7  
20 of Title 11 of the United States Code, the Commission may, at its sole discretion and without  
21 prior notice to Martin, petition the Court for an order requiring Martin to pay the unpaid portion  
22 of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil  
23 penalty allowable under the law. In connection with any such petition, the only issue shall be  
24 whether the financial information provided by Defendant was fraudulent, misleading, inaccurate,  
25 or incomplete in any material respect as of the time such representations were made. In its  
26 petition, the Commission may move this Court to consider all available remedies, including, but  
27 not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or  
28 sanctions for contempt of this Final Judgment. The Commission may also request additional

1 discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of  
2 this Consent or the Final Judgment; (2) contest the allegations in the Complaint filed by the  
3 Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest  
4 or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-  
5 judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty  
6 allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited  
7 to, any statute of limitations defense.

8 IV.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions  
10 of Defendant's Consent filed concurrently with this Judgment are incorporated by this reference,  
11 that Defendant shall comply with the Consent and that a breach of the terms of the Consent  
12 therefore shall constitute a failure to adhere to the terms of this Judgment.

13 V.

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

18 VI.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Judgment  
20 shall be served upon Defendant and/or Defendant's Counsel by Counsel for Plaintiff.

21 Dated: August 24, 2006.

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25 United States District Court Judge  
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