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137023 U.S. DISTRICT COURT
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CENTRAL DISTRICT OF CALIFORNIA
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CENTRAL DISTRICT OF CALIF.
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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ENTER ON 12/22/03
DEC 22 2003

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 RICHARD MARKS,

16 Defendant.

CV03-9196 CBM (Mcx)
Civil Action No.

~~PROPOSED~~ FINAL JUDGMENT
OF PERMANENT INJUNCTION
AND OTHER RELIEF AGAINST
DEFENDANT RICHARD MARKS

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18 Plaintiff Securities and Exchange Commission ("Commission"), having
19 filed and served upon Defendant Richard Marks ("Marks") a Summons and
20 Complaint in this action; Marks having admitted service upon him of the
21 Summons and Complaint in this action and the jurisdiction of this Court over him
22 and over the subject matter of this action; having been fully advised and informed
23 of his right to a judicial determination of this matter; having waived the entry of
24 findings of fact and conclusions of law as provided by Rule 52 of the Federal
25 Rules of Civil Procedure; having consented to the entry of this Final Judgment Of
26 Permanent Injunction And Other Relief Against Defendant Richard Marks ("Final
27 Judgment") without admitting or denying the allegations in the Complaint, except
28 as specifically set forth in the Consent Of Richard Marks 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 Final Judgment being necessary; and this Court
3 being fully advised:

4 **I.**

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Marks and
6 his agents, servants, employees and attorneys, and all persons in active concert or
7 participation with any of them who receive actual notice of this Final 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 any securities by the
10 use of any means or instruments of transportation or communication in interstate
11 commerce or by 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 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 (“Securities Act”), 15
20 U.S.C. § 77q(a).

21 **II.**

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

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- 1 A. employing any device, scheme, or artifice to defraud;
 - 2 B. making any untrue statement of a material fact or omitting to state a
 - 3 material fact necessary in order to make the statements made, in the
 - 4 light of the circumstances under which they were made, not
 - 5 misleading; or
 - 6 C. engaging in any act, practice, or course of business which operates or
 - 7 would operate as a fraud or deceit upon any person;
- 8 in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.
- 9 § 78j(b) (the "Exchange Act"), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

10 **III.**

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Marks

12 and his agents, servants, employees and attorneys, and all persons in active concert

13 or participation with any of them who receive actual notice of this Final Judgment

14 by personal service or otherwise, and each of them, are permanently restrained and

15 enjoined from filing, or causing to be filed, annual reports with the Commission

16 on Forms 10-K that fail to contain material information necessary to make the

17 required statements made in the Forms 10-K, in light of the circumstances under

18 which they are made, not misleading, in violation of Section 13(a) of the Exchange

19 Act, 15 U.S.C. § 78m(a), and Rules 12b-20 and 13a-1 thereunder, 17 C.F.R.

20 §§ 240.12b-20 & 240.13a-1.

21 **IV.**

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Marks

23 and his agents, servants, employees and attorneys, and all persons in active concert

24 or participation with any of them who receive actual notice of this Final Judgment

25 by personal service or otherwise, and each of them, are permanently restrained and

26 enjoined from:

- 27 A. failing to make and keep books, records, and accounts, which, in
- 28 reasonable detail, accurately and fairly reflect the transactions and

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- 1 dispositions of the assets of the issuer;
- 2 B. knowingly circumventing or knowingly failing to implement a system
- 3 of internal accounting controls or knowingly falsifying any book,
- 4 record or account described above;
- 5 C. directly or indirectly falsifying or causing to be falsified, any book,
- 6 record, or account described above;

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

V.

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

- 16 A. making or causing to be made a materially false or misleading
- 17 statement; or
- 18 B. omitting to state, or causing another person to omit to state, any
- 19 material fact necessary in order to make statements made, in light of
- 20 the circumstances under which such statements were made, not
- 21 misleading;

22 to an accountant in connection with:

- 23 1. an audit or examination of the financial statements of the issuer
- 24 required to be made, or
- 25 2. the preparation or filing of any document or report required to
- 26 be filed with the Commission;

27 in violation of Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

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VI.

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2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marks
3 shall pay disgorgement in the amount of \$651,500.00 plus prejudgment interest
4 thereon of \$239,188.20, totaling \$890,688.20, and a civil penalty of \$330,000.00
5 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77u(d), and Section
6 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Marks shall satisfy this
7 obligation by paying \$1,220,688.20 within ten days of the date of entry of this
8 Final Judgment in the form of a cashier's check, certified check or postal money
9 order payable to the Clerk of this Court, together with a cover letter that identifies
10 the defendant, the name and case number of this litigation and the court. A copy
11 of the cover letter shall be simultaneously transmitted to counsel for the
12 Commission in this action at the Commission's Pacific Regional Office in Los
13 Angeles, California. By making this payment, Marks relinquishes all legal and
14 equitable right, title, and interest in such funds, and no part of the funds shall be
15 returned to Marks. The Clerk shall deposit the funds into an interest bearing
16 account with the Court Registry Investment System ("CRIS"). These funds,
17 together with any interest and income earned thereon (collectively, the "Fund"),
18 shall be held by the CRIS until further order of the Court. In accordance with the
19 guidelines set by the Director of the Administrative Office of the United States
20 Courts, the Clerk is directed, without further order of this Court, to deduct from
21 the income earned on the money in the Fund a fee equal to ten percent of the
22 income earned on the Fund. Such fee shall not exceed that authorized by the
23 Judicial Conference of the United States. The Commission may propose a plan to
24 distribute the Fund subject to the Court's approval. Such a plan may provide that
25 the Fund shall be distributed pursuant to the Fair Fund provisions of Section
26 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether such Fair Fund
27 distribution is made, the amount ordered to be paid as a civil penalty pursuant to
28 this Final Judgment shall be treated as a penalty paid to the government for all

1 purposes, including all tax purposes. To preserve the deterrent effect of the civil
2 penalty, Marks shall not, in any Related Investor Action, benefit from any offset or
3 reduction of any investor's claim by the amount of any Fair Fund distribution to
4 such investor in this action that is proportionately attributable to the civil penalty
5 paid by Marks ("Penalty Offset"). If the court in any Related Investor Action
6 grants such an offset or reduction, Marks shall, within thirty days after entry of a
7 final order granting the offset or reduction, notify the Commission's counsel in
8 this action and pay the amount of the Penalty Offset to the United States Treasury
9 or to a Fair Fund, as the Commission directs. Such a payment shall not be
10 deemed an additional civil penalty and shall not be deemed to change the amount
11 of the civil penalty imposed in this Final Judgment. For purposes of this
12 paragraph, a "Related Investor Action" means a private damages action brought
13 against Marks by or on behalf of one or more investors based on substantially the
14 same facts as alleged in the Complaint in this action.

15 **VII.**

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Marks
17 shall not seek or accept, directly or indirectly, reimbursement or indemnification
18 from any source including, but not limited to, payment made pursuant to any
19 insurance policy, with regard to any penalty amounts that Marks shall pay
20 pursuant to this Final Judgment, regardless of whether such penalty amounts or
21 any part thereof are added to a distribution fund or otherwise used for the benefit
22 of investors. Marks further shall not claim, assert or apply for a tax deduction or
23 tax credit with regard to any federal, state or local tax for any penalty amounts that
24 Marks has been ordered to pay pursuant to this Final Judgment, regardless of
25 whether such amounts or any part thereof are added to a distribution fund or
26 otherwise used for the benefit of investors.

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VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marks be permanently prohibited, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

IX.

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

X.

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

XI.

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

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XII.

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.

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DATED: 12/12/03


UNITED STATES DISTRICT JUDGE