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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 SECURITIES AND EXCHANGE COMMISSION, Civil Action No. 04-2683 FMS

14 Plaintiff,

15 vs.

16 HERSHEY MOSS,

17 Defendant.

~~PROPOSED~~ FINAL JUDGMENT

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19 Plaintiff Securities and Exchange Commission (“Commission”) filed a Complaint against
20 defendant Hershey Moss (“Moss”) and Moss has appeared and answered the Complaint. Moss, who
21 is represented by counsel, has submitted a Consent of Hershey Moss to Entry of Final Judgment
22 (“Consent”), which was filed simultaneously with this ~~Proposed~~ Final Judgment and incorporated
23 herein by reference. In the Consent, Moss admitted the jurisdiction of this Court over him and over
24 the subject matter of this action, admitted that he was fully advised and informed of the right to a
25 judicial determination of this matter, waived findings of fact and conclusions of law as provided by
26 Rule 52 of the Federal Rules of Civil Procedure, consented to the entry of this Final Judgment,
27 without admitting or denying any of the allegations in the Complaint except as set forth in the
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1 Consent, and waived notice of hearing upon the entry of this Final Judgment. The Court, being fully
2 advised in the premises, orders as follows.

3 I.

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

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

16 in connection with the purchase or sale of the securities of any issuer, by the use of any means or
17 instrumentality of interstate commerce, or of the mails, or of any facility of any national securities
18 exchange.

19 II.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Moss and his agents,
21 servants, employees, those with power of attorney on Moss's behalf, and all persons acting in concert
22 or participation with any of them, who receive actual notice of this Final Judgment, by personal
23 service or otherwise, and each of them, are permanently enjoined and restrained from violating
24 Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use
25 of any means or instruments of transportation or communication in interstate commerce or by use of
26 the mails, directly or indirectly:

- 27 1. to employ any device, scheme, or artifice to defraud;

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

6 III.

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section
8 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Moss is prohibited from serving as an officer
9 or director of any issuer of a security registered pursuant to Section 12 or 15(d) of the Exchange Act.

10 IV.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Moss shall pay a civil
12 penalty in the amount of \$25,000 pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C.
13 § 77t(d)(1)] and Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Moss shall make this
14 payment within 30 days after entry of this Final Judgment by certified check, bank cashier's check,
15 or United States postal money order payable to the Securities and Exchange Commission. The
16 payment shall be delivered or mailed to the Office of Financial Management, Securities and
17 Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria,
18 Virginia 22312, and shall be accompanied by a letter identifying Moss as the defendant in this action;
19 setting forth the title and civil action number of this action and the name of this Court; and specifying
20 that payment is made pursuant to this Final Judgment.

21 V.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Consent is
23 incorporated by this reference as though fully set forth and that Moss shall comply with the Consent
24 and that a breach of the terms of the Consent.

VI.

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

Dated: December 28, 2004

United States District Judge



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