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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 SECURITIES AND EXCHANGE COMMISSION,

14 Plaintiff,

15 vs.

16 THOMAS R. STITT,

17 Defendant.

Civil Action No. C 04 4120

**[PROPOSED] FINAL JUDGMENT OF
PERMANENT INJUNCTION AND OTHER
RELIEF AGAINST DEFENDANT
THOMAS R. STITT**

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19 Plaintiff United States Securities and Exchange Commission ("Commission") has filed
20 its Complaint for Permanent Injunction and Legal and Other Equitable Relief ("Complaint") in this
21 action. Defendant Thomas R. Stitt ("Stitt"), who was represented by his counsel, has submitted a
22 Consent of Thomas R. Stitt to Entry of Final Judgment ("Consent"), which was filed simultaneously
23 with this [Proposed] Final Judgment of Permanent Injunction and Other Relief Against Defendant
24 Thomas R. Stitt ("Final Judgment") and incorporated herein by reference. In the Consent, Stitt
25 waived service of the Summons and the Complaint, admitted the jurisdiction of this Court over him
26 and over the subject matter of this action, admitted that he was fully advised and informed of the right
27 to a judicial determination of this matter, waived findings of fact and conclusions of law as provided
28 by Rule 52 of the Federal Rules of Civil Procedure, consented to the entry of this Final Judgment,

[Proposed] Final Judgment of Permanent Injunction
and Other Relief Against Thomas R. Stitt

1 without admitting or denying any of the allegations in the Complaint except as set forth in the
 2 Consent, and waived notice of hearing upon the entry of this Final Judgment. The Court, being fully
 3 advised in the premises, orders as follows.

4 I.

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

- 11 1. employing any device, scheme, or artifice to defraud;
 - 12 2. making any untrue statement of a material fact or omitting to state a material fact
 13 necessary in order to make the statements made, in the light of the circumstances under
 14 which they were made, not misleading; or
 - 15 3. engaging in any act, practice, or course of business which operates or would operate as a
 16 fraud or deceit upon any person;
- 17 in connection with the purchase or sale of the securities of any issuer, by the use of any means or
 18 instrumentality of interstate commerce, or of the mails, or of any facility of any national securities
 19 exchange.

20 II.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stitt and his agents,
 22 servants, employees, those with power of attorney on Stitt's behalf, and all persons acting in concert
 23 or participation with any of them, who receive actual notice of this Final Judgment, by personal
 24 service or otherwise, and each of them, are permanently enjoined and restrained from violating
 25 Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13
 26 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] by filing with the Commission
 27 periodic reports containing materially false and misleading financial statements.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stitt and his agents, servants, employees, those with power of attorney on Stitt's behalf, and all persons acting in concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by failing to keep accurate books and records or devise or maintain internal accounting controls or directly or indirectly falsifying any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stitt and his agents, servants, employees, those with power of attorney on Stitt's behalf, and all persons acting in concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-2 thereunder [17 C.F.R. § 240.13b2-2] by knowingly circumventing or failing to implement a system of internal accounting controls or making or omitting to state a misstatement of material fact to an accountant in connection with an audit or examination of the financial statements of an issuer or the preparation of a document required to be filed with the Commission.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stitt is prohibited from serving as an officer or director of any issuer of a security registered pursuant to Sections 12 or 15(d) of the Exchange Act for a period of 10 years from the date of entry of this Final Judgment.

VI.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stitt shall pay
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3 disgorgement of \$28,000.00, together with prejudgment interest thereon in the amount of \$1,980.00,
4 for a total of \$29,980.00. Defendant shall satisfy this obligation by paying three equal installments
5 due 30, 120, and 210 days from the date of entry of Final Judgment to the Clerk of this Court,
6 together with a cover letter identifying Thomas R. Stitt as the defendant in this action; setting forth
7 the title and civil action number of this action and the name of this Court; and specifying that
8 payment is disgorgement made pursuant to this Final Judgment. Defendant shall simultaneously
9 transmit photocopies of such payment and letter to the attention of Helene L. Morrison, District
10 Administrator, at the Commission's San Francisco District Office, 44 Montgomery Street, Suite
11 1100, San Francisco, CA 94104. By making each payment, Defendant relinquishes all legal and
12 equitable right, title, and interest in such funds, and no part of the funds shall be returned to
13 Defendant. The Clerk shall deposit each payment into an interest bearing account with the Court
14 Registry Investment System ("CRIS"). These funds, together with any interest and income earned
15 thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In
16 accordance with the guidelines set by the Director of the Administrative Office of the United States
17 Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on
18 the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not
19 exceed that authorized by the Judicial Conference of the United States. The Commission may by
20 motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may
21 provide that Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the
22 Sarbanes-Oxley Act of 2002.
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VII.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Stitt shall pay a civil
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3 penalty in the amount of \$50,000.00 pursuant to the provisions of Section 20(d) of the Securities Act
4 [15 U.S.C. § 77t(d)]. Defendant shall satisfy this obligation by paying three equal installments due
5 30, 120, and 210 days from the date of entry of this Final Judgment to the Clerk of this Court,
6 together with a cover letter identifying Thomas R. Stitt as the defendant in this action; setting forth
7 the title and civil action number of this action and the name of this Court; and specifying that
8 payment is a civil penalty made pursuant to this Final Judgment. Defendant shall simultaneously
9 transmit photocopies of such payment and letter to the attention of Helene Morrison, District
10 Administrator, at the Commission's San Francisco District Office, 44 Montgomery Street, Suite
11 1100, San Francisco, CA 94104. By making each payment, Defendant relinquishes all legal and
12 equitable right, title, and interest in such funds, and no part of the funds shall be returned to
13 Defendant. The Clerk shall deposit the funds into an interest bearing account with the CRIS. These
14 funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held
15 by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of
16 the Administrative Office of the United States Courts, the Clerk is directed, without further order of
17 this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of
18 the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference
19 of the United States. The Commission may by motion propose a plan to distribute the Fund subject to
20 the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair
21 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any
22 such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this
23 Judgment shall be treated as penalties paid to the government for all purposes, including all tax
24 purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, in any Related
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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.

VIII.

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

IX.

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 Judgment and other orders and decrees which may be entered, and to grant such other relief as this Court may deem necessary and just.

X.

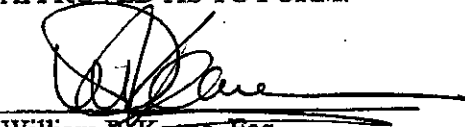
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Judgment may be served upon Stitt, or his counsel, in person or by mail either by the United States Marshall, the Clerk of the Court, or any member of the staff of the Commission.

Dated: January 12, 2005


United States District Court Judge

APPROVED AS TO FORM:

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