

1 SECURITIES AND EXCHANGE COMMISSION
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5 Attorneys for Plaintiff
6 Securities and Exchange Commission

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 U.S. SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 JERRY S. CHANG,

15 Defendant.
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Civil Case No. C-04-4144-CRB

Honorable Charles R. Breyer

[PROPOSED] FINAL JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST
DEFENDANT JERRY S. CHANG

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18 Plaintiff Securities and Exchange Commission ("Commission") has filed its Complaint for
19 Permanent Injunction and Legal and Other Equitable Relief ("Complaint") in this action.
20 Defendant Jerry S. Chang ("Defendant"), who was represented by counsel, has submitted a
21 Consent of Defendant Jerry S. Chang to Entry of Final Judgment of Permanent Injunction and
22 Other Relief ("Consent"), which was filed simultaneously with this [Proposed] Final Judgment of
23 Permanent Injunction and Other Relief Against Defendant Jerry S. Chang ("Final Judgment") and
24 incorporated herein by reference. In the Consent, Chang admitted service of the Summons and
25 Complaint, admitted the jurisdiction of this Court over him and over the subject matter of this
26 action, admitted that he was fully advised and informed of his right to a judicial determination of
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1 this matter, waived findings of fact and conclusions of law as provided by Rule 52 of the Federal
2 Rules of Civil Procedure, consented to the entry of this Final Judgment, without admitting or
3 denying any of the allegations in the Complaint except as set forth in the Consent, and waived
4 notice of hearing upon the entry of this Final Judgment. The Court, being fully advised in the
5 premises, orders as follows:

7 I.

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
9 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
10 participation with them who receive actual notice of this Final Judgment by personal service or
11 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
12 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule
13 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of
14 interstate commerce, or of the mails, or of any facility of any national securities exchange, in
15 connection with the purchase or sale of any security:

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

24 II.

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
26 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
27 participation with them who receive actual notice of this Final Judgment by personal service or
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1 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
2 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or knowingly
3 failing to implement a system of internal accounting controls or knowingly falsifying any book,
4 record, or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].
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6 III.

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
8 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
9 participation with them who receive actual notice of this Final Judgment by personal service or
10 otherwise are permanently restrained and enjoined from violating Rule 13b2-1 [17 C.F.R. §
11 240.13b2-1] by, directly or indirectly, falsifying or causing to be falsified, any book, record or
12 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].
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14 IV.

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
16 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
17 participation with them who receive actual notice of this Final Judgment by personal service or
18 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Rule
19 13b2-2 of the Exchange Act [17 C.F.R. §240.13b2-2], by, as a director or officer of an issuer,
20 directly or indirectly making or causing to be made to an accountant in connection with an audit,
21 review or examination of the financial statements of the issuer, or in preparation or filing of a
22 document or report, required to be made or filed pursuant to statute or to the Commission's rules
23 or otherwise, a materially false or misleading statement, or an omission of a material fact
24 necessary to make statements made, in the light of the circumstances under which they were
25 made, not misleading.
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V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 13a-1, 13a-13 and 12b-20 thereunder, [17 C.F.R. §§ 240.12b-20 and 240.13a-1, 240.13a-11, and 240.13a-13], by knowingly providing substantial assistance to any issuer that has securities registered pursuant to 15 U.S.C. § 78l, and which fails to file with the Commission an annual report, or a quarterly report, or a current report on the appropriate form authorized or prescribed and in the time prescribed therefor, which in addition to the information expressly required to be included in the report also contains such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by providing substantial assistance to any issuer which has a class of securities registered pursuant to 15 U.S.C. § 78l and which fails to make and keep books, records, or accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited 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. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of two hundred thousand dollars (\$200,000) pursuant to Section 21(d)(3)(B)(iii) of the Exchange Act. Defendant shall make such civil penalty payment as follows: (A) Defendant shall pay one hundred thousand dollars (\$100,000) within one-hundred eighty (180) calendar days after entry of this Final Judgment; and (B) Defendant shall pay one hundred thousand dollars (\$100,000) within three-hundred sixty (360) calendar days after entry of this Final Judgment. Defendant's payment due within three hundred-and-sixty (360) days shall include all post-judgment interest on the disgorgement and civil penalty amounts ordered from the date of entry of this Final Judgment pursuant to 28 U.S.C. § 1961. Defendant shall make each such payment to the Clerk of this Court together with a cover letter identifying Jerry S. Chang 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 each such payment and letter to the attention of Helane L. Morrison, District Administrator at the Commission's San Francisco District Office, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104. By making such payments, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement, together with prejudgment interest thereon, in the aggregate amount of two hundred thousand dollars (\$200,000), representing profits gained as a result of the conduct alleged in the Complaint and prejudgment interest thereon. Defendant shall satisfy this obligation by paying to the Clerk of this Court: (A) one hundred thousand dollars (\$100,000) within ten (10) calendar days of entry of this Final Judgment; (B) one hundred thousand dollars (\$100,000) within ninety (90) calendar days of entry of this Final Judgment. Defendant shall make each such payment together with a cover letter identifying Jerry S. Chang 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 each such payment and letter to the attention of Helane L. Morrison, District Administrator at the Commission's San Francisco District Office, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104. By making such payments, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Upon entry of this Final Judgment, the escrow agent for escrow account number Z01556727 at the Citigroup Private Bank shall disburse all funds, including interest, from such escrow account to the Clerk of this Court.

X.

Defendant agrees that if the full amount of any payment described in Paragraphs VIII and IX, above, is not made within thirty (30) days following the date the payment is required by this Final Judgment, the entire amount of disgorgement, prejudgment interest, and civil penalties, \$400,000, plus post judgment interest, minus payments made, if any, is due and payable immediately without further application;

XI.

The Clerk shall deposit the civil penalty, disgorgement, prejudgment interest and post-judgment interest paid pursuant to Paragraphs VIII and IX, herein, into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and 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 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, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, 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.

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

XIII.

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

Dated: Nov. 01, 2005

Approved as to form:

Michael H. Diamond, Esq.
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Attorneys for Defendant Jerry S. Chang

