

ORIGINAL

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4 SECURITIES AND EXCHANGE COMMISSION  
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RICHARD W. WILKINS  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

JCS

C 05 00135

12 SECURITIES AND EXCHANGE COMMISSION,  
13 Plaintiff,  
14 vs.  
15 THOM CALANDRA,  
16 Defendant.

Case No.

~~PROPOSED~~ FINAL JUDGMENT

17  
18 The Securities and Exchange Commission having filed a Complaint and Defendant  
19 Thom Calandra ("Defendant") having entered a general appearance; consented to the Court's  
20 jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final  
21 Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction);  
22 waived findings of fact and conclusions of law; and waived any right to appeal from this Final  
23 Judgment:

24 I.

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 participation  
27 with them who receive actual notice of this Final Judgment by personal service or otherwise are  
28 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the

1 Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5  
2 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate  
3 commerce, or of the mails, or of any facility of any national securities exchange, in connection with  
4 the purchase or sale of any security:

5 (a) to employ any device, scheme, or artifice to defraud;

6 (b) to make any untrue statement of a material fact or to omit to state a material  
7 fact necessary in order to make the statements made, in the light of the circumstances under which  
8 they were made, not misleading; or

9 (c) to engage in any act, practice, or course of business which operates or would  
10 operate as a fraud or deceit upon any person.

11 II.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
13 Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation  
14 with them who receive actual notice of this Final Judgment by personal service or otherwise are  
15 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933  
16 ("Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or  
17 instruments of transportation or communication in interstate commerce or by use of the mails,  
18 directly or indirectly:

19 (a) to employ any device, scheme, or artifice to defraud;

20 (b) to obtain money or property by means of any untrue statement of a material fact or  
21 any omission of a material fact necessary in order to make the statements made, in light of the  
22 circumstances under which they were made, not misleading; or

23 (c) to engage in any transaction, practice, or course of business which operates or  
24 would operate as a fraud or deceit upon the purchaser.

25 III.

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
27 Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation  
28 with them who receive actual notice of this Final Judgment by personal service or otherwise are

1 permanently restrained and enjoined from violating Section 17(b) of the Securities Act [15 U.S.C. §  
2 77q(b)] by the use of any means or instruments of transportation or communication in interstate  
3 commerce or by use of the mails, to publish, give publicity to, or circulate any notice, circular,  
4 advertisement, newspaper, article, letter, investment service, or communication which, though not  
5 purporting to offer a security for sale, describes such security for a consideration received or to be  
6 received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the  
7 receipt, whether past or prospective, of such consideration and the amount thereof.

8 IV.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable  
10 for disgorgement of \$405,878.95, representing profits gained as a result of the conduct alleged in the  
11 Complaint, together with prejudgment interest thereon in the amount of \$10,230.63, for a total of  
12 \$416,109.58. Defendant shall satisfy this obligation by paying \$416,109.58 within sixty (60)  
13 business days after entry of this Final Judgment by certified check, bank cashier's check, or United  
14 States postal money order payable to the Securities and Exchange Commission. The payment shall  
15 be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission,  
16 Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall  
17 be accompanied by a letter identifying Thom Calandra as a defendant in this action; setting forth the  
18 title and civil action number of this action and the name of this Court; and specifying that payment is  
19 made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such  
20 payment and letter to the attention of Helene Morrison, District Administrator, at the Commission's  
21 San Francisco District Office, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104. By  
22 making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such  
23 funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-judgment  
24 interest on any delinquent amounts pursuant to 28 USC § 1961.

25 V.

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall  
27 pay a civil penalty in the amount of \$125,000 pursuant to Section 20(d) of the Securities Act [15  
28 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall

1 make this payment within sixty (60) business days after entry of this Final Judgment by certified  
2 check, bank cashier's check, or United States postal money order payable to the Securities and  
3 Exchange Commission. The payment shall be delivered or mailed to the Office of Financial  
4 Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way,  
5 Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Thom  
6 Calandra as a defendant in this action; setting forth the title and civil action number of this action and  
7 the name of this Court; and specifying that payment is made pursuant to this Final Judgment. A  
8 Copy of the cover letter shall be simultaneously transmitted to the attention of Helene Morrison,  
9 District Administrator, at the Commission's San Francisco District Office, 44 Montgomery Street,  
10 Suite 2600, San Francisco, CA 94104. Defendant shall pay post-judgment interest on any delinquent  
11 amounts pursuant to 28 USC § 1961.


12 VI.

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

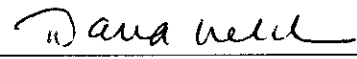
VII.

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: 1/24, 05

  
UNITED STATES DISTRICT JUDGE  
JOSEPH C. SPERO *Magistrate*

APPROVED AS TO FORM:

  
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Dana Welch, Esq.  
Telephone: (714) 564-0600  
Facsimile: (714) 347-1863

Attorney for Defendant THOM CALANDRA

SUBMITTED BY:

  
\_\_\_\_\_

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Sahil W. Desai

Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION