

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Scan Entry No 336
FILED
CLERK, U.S. DISTRICT COURT
JUL 21 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

U.S. SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

ERNESTO V. SIBAL, DOSEPH J.
SHIN, ROBERT Y. JOO, CHAE
HYON CHIN, BENJAMIN Y. CHIU
AND PEJMAN SABET,

Defendants.

Case No. CV 05-3133 (AJW)

FINAL JUDGMENT AS TO
DEFENDANT BENJAMIN Y. CHIU

ENTERED
CLERK, U.S. DISTRICT COURT
JUL 22 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

The Securities and Exchange Commission having filed a Complaint and Defendant Benjamin Y. Chiu having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I. THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

IT IS HEREBY 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

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1 permanently restrained and enjoined from violating, directly or indirectly,
2 Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act")
3 [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §
4 240.10b-5], by using any means or instrumentality of interstate commerce,
5 or of the mails, or of any facility of any national securities exchange, in
6 connection with the purchase or sale of any security:
7

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

9 (b) to make any untrue statement of a material fact or to omit to
10 state a material fact necessary in order to make the statements made, in the
11 light of the circumstances under which they were made, not misleading; or
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13 (c) to engage in any act, practice, or course of business which
14 operates or would operate as a fraud or deceit upon any person.
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17 II.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND
19 DECREED that Defendant and Defendant's agents, servants, employees,
20 attorneys, and all persons in active concert or participation with them who
21 receive actual notice of this Final Judgment by personal service or otherwise
22 are permanently restrained and enjoined from violating Section 14(e) of the
23 Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3]
24 promulgated thereunder, in connection with any tender offer or request or
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1 invitation for tenders, from engaging in any fraudulent, deceptive, or
2 manipulative act or practice, by:

3 (a) purchasing or selling or causing to be purchased or
4 sold the securities sought or to be sought in such tender offer, securities
5 convertible into or exchangeable for any such securities or any option or
6 right to obtain or dispose of any of the foregoing securities while in
7 possession of material information relating to such tender offer that
8 Defendant knows or has reason to know is nonpublic and knows or has
9 reason to know has been acquired directly or indirectly from the offering
10 person; the issuer of the securities sought or to be sought by such tender
11 offer; or any officer, director, partner, employee or other person acting on
12 behalf of the offering person of such issuer, unless within a reasonable time
13 prior to any such purchase or sale such information and its source are
14 publicly disclosed by press release or otherwise; or

15 (b) communicating material, nonpublic information
16 relating to a tender offer, which Defendant knows or has reason to know is
17 nonpublic and knows or has reason to know has been acquired directly or
18 indirectly from the offering person; the issuer of the securities sought or to
19 be sought by such tender offer; or any officer, director, partner, employee,
20 advisor, or other person acting on behalf of the offering person of such
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1 issuer, to any person under circumstances in which it is reasonably
2 foreseeable that such communication is likely to result in the purchase or
3 sale of securities in the manner described in subparagraph (a) above, except
4 that this paragraph shall not apply to a communication made in good faith
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6 (i) to the officers, directors, partners or employees of
7 the offering person, to its advisors or to other persons, involved in the
8 planning, financing, preparation or execution of such tender offer;
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10 (ii) to the issuer whose securities are sought or to be
11 sought by such tender offer, to its officers, directors, partners, employees or
12 advisors or to other persons involved in the planning, financing, preparation
13 or execution of the activities of the issuer with respect to such tender offer;
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15 or

16 (iii) to any person pursuant to a requirement of any
17 statute or rule or regulation promulgated thereunder.
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19 III.

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21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND
22 DECREED that Defendant is liable for disgorgement of \$14,373,
23 representing profits gained as a result of the conduct alleged in the
24 Complaint, together with prejudgment interest thereon in the amount of
25 \$1,457.79 and a civil penalty in the amount of \$14,373 pursuant to Section
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1 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this
2 obligation by paying \$30,230.79 within ten business days to the Clerk of this
3 Court, together with a cover letter identifying Benjamin Y. Chiu as a
4 defendant in this action; setting forth the title and civil action number of this
5 action and the name of this Court; and specifying that payment is made
6 pursuant to this Final Judgment. Defendant shall simultaneously transmit
7 photocopies of such payment and letter to the Commission's counsel in this
8 action. By making this payment, Defendant relinquishes all legal and
9 equitable right, title, and interest in such funds, and no part of the funds shall
10 be returned to Defendant. Defendant shall pay post-judgment interest on
11 any delinquent amounts pursuant to 28 U.S.C. § 1961.
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14 The Clerk shall deposit the funds into an interest bearing account.
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16 These funds, together with any interest and income earned thereon
17 (collectively, the "Fund"), shall be held by in such account until further
18 order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines
19 set by the Director of the Administrative Office of the United States Courts,
20 the Clerk is directed, without further order of this Court, to deduct from the
21 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.
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1 The Commission may by motion propose a plan to distribute the Fund
2 subject to the Court's approval. Such a plan may provide that Fund shall be
3 distributed pursuant to the Fair Fund provisions of Section 308(a) of the
4 Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund
5 distribution is made, amounts ordered to be paid as civil penalties pursuant
6 to this Judgment shall be treated as penalties paid to the government for all
7 purposes, including all tax purposes. To preserve the deterrent effect of the
8 civil penalty, Defendant shall not, after offset or reduction of any award of
9 compensatory damages in any Related Investor Action based on Defendant's
10 payment of disgorgement in this action, argue that he is entitled to, nor shall
11 he further benefit by, offset or reduction of such compensatory damages
12 award by the amount of any part of Defendant's payment of a civil penalty
13 in this action ("Penalty Offset"). If the court in any Related Investor Action
14 grants such a Penalty Offset, Defendant shall, within 30 days after entry of a
15 final order granting the Penalty Offset, notify the Commission's counsel in
16 this action and pay the amount of the Penalty Offset to the United States
17 Treasury or to a Fair Fund, as the Commission directs. Such a payment shall
18 not be deemed an additional civil penalty and shall not be deemed to change
19 the amount of the civil penalty imposed in this Judgment. For purposes of
20 this paragraph, a "Related Investor Action" means a private damages action
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1 brought against Defendant by or on behalf of one or more investors based on
2 substantially the same facts as alleged in the Complaint in this action.

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4 IV.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED
6 that the Consent is incorporated herein with the same force and effect as if
7 fully set forth herein, and that Defendant shall comply with all of the
8 undertakings and agreements set forth therein.
9

10 V.

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

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17 There being no just reason for delay, pursuant to Rule 54(b) of the
18 Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final
19 Judgment forthwith and without further notice.
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22 Dated: 7/21, 2005

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26 UNITED STATES DISTRICT JUDGE
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