

1 THOMAS J. KRYSA (krysat@sec.gov) Colorado Bar No. 28440  
2 ELIZABETH E. KRUPA (krupae@sec.gov) Colorado Bar No. 26028  
3 Attorneys for US. Securities and Exchange Commission  
4 1801 California Street, Suite 1500  
5 Denver, Colorado 80202  
6 Telephone: (303) 844-1000  
7 Facsimile: (303) 844-1068

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

*\*E-FILED - 2/14/07\**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

15 KEITH G. BAXTER, RONALD J. GOEDDE,  
16 RICHARD D. NYE,

17 Defendants.

Case Number C-05-3843 RMW

FINAL JUDGMENT AS TO  
DEFENDANT KEITH G. BAXTER

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

23 I.

24 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and  
25 Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
26 participation with them who receive actual notice of this Final Judgment by personal service or  
27 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section  
28 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule  
10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of

1 interstate commerce, or of the mails, or of any facility of any national securities exchange, in  
2 connection with the purchase or sale of any security:

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

9 II.

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and  
11 Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
12 participation with them who receive actual notice of this Final Judgment by personal service or  
13 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section  
14 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder  
15 [17 C.F.R. § 240.13b2-1] by:

- 16 (a) falsifying or causing to be falsified any book, record or account subject to Section  
17 13(b)(2)(A) of the Exchange Act; or
- 18 (b) knowingly circumventing or knowingly failing to implement a system of internal  
19 accounting controls.

20 III.

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
22 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
23 participation with them who receive actual notice of this Final Judgment by personal service or  
24 otherwise are permanently restrained and enjoined from violating Rule 13b2-2 under the  
25 Exchange Act [17 C.F.R. § 240.13b2-2] by directly or indirectly making or causing to be made  
26 materially false or misleading statements, or omitting to state or causing other persons to omit to  
27 state material facts necessary in order to make statements made, in light of the circumstances  
28 under which such statements are made, not misleading to an accountant in connection with: (1) an

1 audit or examination of the financial statements of an issuer required to be made pursuant to the  
2 Exchange Act; or (2) the preparation or filing of any document or report required to be filed with  
3 the Commission pursuant to the Exchange Act or otherwise.

4 IV.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
6 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
7 participation with them who receive actual notice of this Final Judgment by personal service or  
8 otherwise are permanently restrained and enjoined from aiding and abetting any violations of  
9 Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a), and 78m(b)(2)] and Rules  
10 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13], by knowingly  
11 providing substantial assistance to an issuer that:

- 12 (a) fails to file with the Commission any report or statement required to be filed with  
13 the Commission pursuant to Section 13(a) of the Exchange Act and the rules and  
14 regulations promulgated thereunder, or information and documents required by the  
15 Commission to keep reasonably current the information and documents required to  
16 be included in or filed with an application or registration statement filed pursuant  
17 to Section 12 of the Exchange Act;
- 18 (b) fails, in addition to the information expressly required to be included in a  
19 statement or report, to add such further material information as is necessary to  
20 make the required statements, in the light of the circumstances under which they  
21 were made not misleading;
- 22 (c) fails to make and keep books, records, and accounts, which, in reasonable detail,  
23 accurately and fairly reflect the transactions and dispositions of assets of the issuer.

24 V.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a  
26 civil penalty in the amount of \$40,000 pursuant to Section 21(d)(3) of the Exchange Act [15  
27 U.S.C. § 78u(d)(3)]. Defendant shall make this payment within ten (10) business days after entry  
28 of this Final Judgment by certified check, bank cashier's check, or United States postal money

1 order payable to the Securities and Exchange Commission. The payment shall be delivered or  
2 mailed to the Office of Financial Management, Securities and Exchange Commission, Operations  
3 Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be  
4 accompanied by a letter identifying Keith G. Baxter as a defendant in this action; setting forth the  
5 title and civil action number of this action and the name of this Court; and specifying that  
6 payment is made pursuant to this Final Judgment. Defendant shall also mail a copy of the letter  
7 and check to counsel for plaintiff at 1801 California Street, Suite 1500, Denver, Colorado, 80202.  
8 Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C.  
9 § 1961.

10 VI.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section  
12 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited from acting as an  
13 officer or director of any issuer that has a class of securities registered pursuant to Section 12 of  
14 the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of  
15 the Exchange Act [15 U.S.C. § 78o(d)] for a period of three years from the date of entry of this  
16 order.

17 VII.

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

21 VIII.

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

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated:   2/14  , 2007

*Ronald M. Whyte*  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE