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4 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13
14 SECURITIES AND EXCHANGE COMMISSION,

15 Plaintiff,

16 vs.

17 JEFFREY B. SCHMIDT; GARY L. GELNETTE;
and NORMAN R. VALINE,

18 Defendants.
19
20

Case No. C-05-5171 MHP

~~PROPOSED~~ ORDER OF FINAL
JUDGMENT AGAINST DEFENDANT
GARY L. GELNETTE

21 The motion by Plaintiff Securities and Exchange Commission (“Commission”) for summary
22 judgment against Defendant Gary L. Gelnette (“Gelnette”), pursuant to Rule 56 of the Federal Rules
23 of Civil Procedure, supported by the Declaration of Mark P. Fickes and the exhibits thereto, was
24 heard by the Court on July 17, 2007.

25 By its motion, the Commission seeks summary judgment against Defendant Gelnette on each
26 of the claims against him, including violation of the securities laws through the offer and sale of
27 securities without registration, fraud in the offer and sale of securities, and fraud in connection with
28 the purchase or sale of a security, as set forth in the Commission’s complaint. The Commission also

1 seeks remedial sanctions, including the entry of an injunction against Defendant, disgorgement plus
 2 prejudgment interest, and an order requiring Defendant to pay civil monetary penalties.

3 The Court, having considered the Commission's motion and papers filed by Gelnette in
 4 response, and having found good cause therefrom, granted the Commission's motion during the
 5 hearing on July 17, 2007. In particular, the Court found that:

- 6 1) There is no genuine issue as to any material fact;
- 7 2) Defendant Gelnette, directly or indirectly, by use of the means or instrumentalities of
 8 interstate commerce, or of the mails, or of a national securities exchange, in connection
 9 with the purchase or sale, and the offer or sale, of securities, employed a device, scheme or
 10 artifice to defraud, made untrue statements of material fact or omitted to state material
 11 facts necessary to make the statements made true, in light of the circumstances under
 12 which they were made, in violation of Section 10(b) of the Securities Exchange Act of
 13 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
 14 240.10b-5, and in violation of Section 17(a) of the Securities Act of 1933 ("Securities
 15 Act"), 15 U.S.C. § 77q(a); and,
- 16 3) Defendant Gelnette, directly or indirectly, in the absence of any applicable exemption, and
 17 without any registration statement filed with the Commission or in effect as to the
 18 securities, made use of means or instruments of transportation or communication in
 19 interstate commerce or of the mails to sell securities, and to offer to sell securities, in
 20 violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c).

21 According, pursuant to Rules 54(b) and 65(d) of the Federal Rules of Civil Procedure:

22 I.

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

1 of the mails, or of any facility of any national securities exchange, in connection with the purchase or
2 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 FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
11 Gelnette and his 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 Section 17(a) of the Securities Act
14 of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any
15 means or instruments of transportation or communication in interstate commerce or by use of the
16 mails, directly or indirectly:

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

23 III.

24 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
25 Gelnette and his 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 Section 5 of the Securities Act, 15
28 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

- 1 (1) Unless a registration statement is in effect as to a security, making use of any means or
2 instruments of transportation or communication in interstate commerce or of the mails
3 to sell such security through the use or medium of any prospectus or otherwise; or
4 (2) Making use of any means or instruments of transportation or communication in
5 interstate commerce or of the mails to offer to sell or offer to buy through the use or
6 medium of any prospectus or otherwise any security, unless a registration statement
7 has been filed with the Commission as to such security, or while the registration
8 statement is the subject of a refusal order or stop order or (prior to the effective date of
9 the registration statement) any public proceeding or examination under Section 8 of
10 the Securities Act, 15 U.S.C. § 77h.

11 IV.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Gelnette is
13 liable jointly and severally with defendant Jeffrey B. Schmidt for disgorgement of \$11,000,000,
14 received through September 30, 2004, together with prejudgment interest thereon (calculated using
15 the post-judgment interest rate set forth in 28 U.S.C. § 1961 in effect as of September 30, 2004), in
16 the amount of \$61,855, for a total of \$11,061,855. Defendant shall satisfy this obligation by paying
17 \$11,061,855 within ten (10) days of this Final Judgment by certified check, bank cashier's check, or
18 United States postal money order payable to the Clerk of this Court, together with a cover letter
19 identifying Gary L. Gelnette as a defendant in this action; setting forth the title and civil action
20 number of this action and the name of this Court; and specifying that payment is made pursuant to
21 this Final Judgment. Defendant shall simultaneously transmit a photocopy of the payment and letter
22 to the Commission's counsel in this action (addressed to Helane L. Morrison, Securities and
23 Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California, 94104). The
24 Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment
25 System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These
26 funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held
27 in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914
28 and the guidelines set by the Director of the Administrative Office of the United States Courts, the

1 Clerk is directed, without further order of this Court, to deduct from the income earned on the money
2 in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed
3 that authorized by the Judicial Conference of the United States. The Commission may propose a plan
4 to distribute the Fund subject to the Court's approval. Defendant shall pay post-judgment interest on
5 any delinquent amounts pursuant to 28 USC § 1961.

6 V.

7 It Is Further Ordered, Adjudged, And Decreed It Is Further Ordered, Adjudged, And Decreed
8 that Defendant shall pay a civil penalty in the amount of \$_____ pursuant to
9 Section 20 of the Securities Act, 15 U.S.C. §§ 77t(d)(2), and Section 21 of the Exchange Act, 15
10 U.S.C. § 78u(d)(3). Defendant shall make this payment within ten (10) business days after entry of
11 this Final Judgment by certified check, bank cashier's check, or United States postal money order
12 payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the
13 Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432
14 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter
15 identifying Gary L. Gelnette as a defendant in this action; setting forth the title and civil action
16 number of this action and the name of this Court; and specifying that payment is made pursuant to
17 this Final Judgment. Defendant shall simultaneously transmit a photocopy of the payment and letter
18 to the Commission's counsel in this action (addressed to Helane L. Morrison, Securities and
19 Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California, 94104).
20 Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.
21 The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

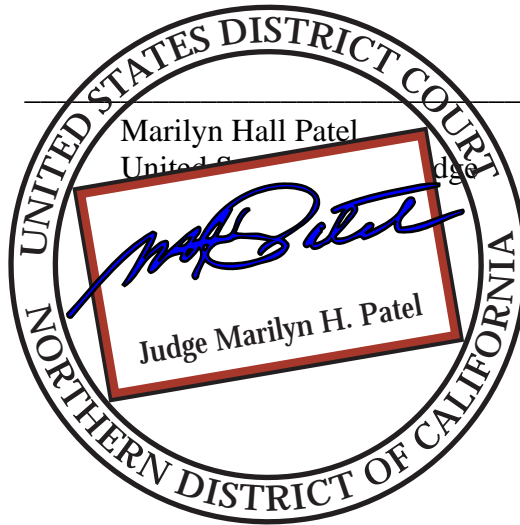
22 VI.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
24 jurisdiction of this matter for the purpose of enforcing the terms of this Order and for all other purposes.
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VII.

There being no just reason for delay, the Clerk is hereby directed to enter this Final Judgment against Defendant Gelnette forthwith and without delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

DATED: 03/27/08



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23 of Civil Procedure, supported by the Declaration of Mark P. Fickes and the exhibits thereto, was
24 heard by the Court on July 17, 2007.

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26 of the claims against him, including violation of the securities laws through the offer and sale of
27 securities without registration, fraud in the offer and sale of securities, and fraud in connection with
28 the purchase or sale of a security, as set forth in the Commission’s complaint. The Commission also

1 seeks remedial sanctions, including the entry of an injunction against Defendant, disgorgement plus
 2 prejudgment interest, and an order requiring Defendant to pay civil monetary penalties.

3 The Court, having considered the Commission's motion and papers filed by Gelnette in
 4 response, and having found good cause therefrom, granted the Commission's motion during the
 5 hearing on July 17, 2007. In particular, the Court found that:

- 6 1) There is no genuine issue as to any material fact;
- 7 2) Defendant Gelnette, directly or indirectly, by use of the means or instrumentalities of
 8 interstate commerce, or of the mails, or of a national securities exchange, in connection
 9 with the purchase or sale, and the offer or sale, of securities, employed a device, scheme or
 10 artifice to defraud, made untrue statements of material fact or omitted to state material
 11 facts necessary to make the statements made true, in light of the circumstances under
 12 which they were made, in violation of Section 10(b) of the Securities Exchange Act of
 13 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
 14 240.10b-5, and in violation of Section 17(a) of the Securities Act of 1933 ("Securities
 15 Act"), 15 U.S.C. § 77q(a); and,
- 16 3) Defendant Gelnette, directly or indirectly, in the absence of any applicable exemption, and
 17 without any registration statement filed with the Commission or in effect as to the
 18 securities, made use of means or instruments of transportation or communication in
 19 interstate commerce or of the mails to sell securities, and to offer to sell securities, in
 20 violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c).

21 According, pursuant to Rules 54(b) and 65(d) of the Federal Rules of Civil Procedure:

22 I.

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

1 of the mails, or of any facility of any national securities exchange, in connection with the purchase or
2 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 FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
11 Gelnette and his 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 Section 17(a) of the Securities Act
14 of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any
15 means or instruments of transportation or communication in interstate commerce or by use of the
16 mails, directly or indirectly:

- 17 (a) to employ any device, scheme, or artifice to defraud;
- 18 (b) to obtain money or property by means of any untrue statement of a material fact or any
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20 the circumstances under which they were made, not misleading; or
- 21 (c) to engage in any transaction, practice, or course of business which operates or would
22 operate as a fraud or deceit upon the purchaser.

23 III.

24 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
25 Gelnette and his 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 Section 5 of the Securities Act, 15
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- 1 (1) Unless a registration statement is in effect as to a security, making use of any means or
2 instruments of transportation or communication in interstate commerce or of the mails
3 to sell such security through the use or medium of any prospectus or otherwise; or
4 (2) Making use of any means or instruments of transportation or communication in
5 interstate commerce or of the mails to offer to sell or offer to buy through the use or
6 medium of any prospectus or otherwise any security, unless a registration statement
7 has been filed with the Commission as to such security, or while the registration
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9 the registration statement) any public proceeding or examination under Section 8 of
10 the Securities Act, 15 U.S.C. § 77h.

11 IV.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Gelnette is
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15 the post-judgment interest rate set forth in 28 U.S.C. § 1961 in effect as of September 30, 2004), in
16 the amount of \$61,855, for a total of \$11,061,855. Defendant shall satisfy this obligation by paying
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18 United States postal money order payable to the Clerk of this Court, together with a cover letter
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20 number of this action and the name of this Court; and specifying that payment is made pursuant to
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23 Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California, 94104). The
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27 in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914
28 and the guidelines set by the Director of the Administrative Office of the United States Courts, the

1 Clerk is directed, without further order of this Court, to deduct from the income earned on the money
2 in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed
3 that authorized by the Judicial Conference of the United States. The Commission may propose a plan
4 to distribute the Fund subject to the Court's approval. Defendant shall pay post-judgment interest on
5 any delinquent amounts pursuant to 28 USC § 1961.

6 V.

7 It Is Further Ordered, Adjudged, And Decreed It Is Further Ordered, Adjudged, And Decreed
8 that Defendant shall pay a civil penalty in the amount of \$ 500,000.00 pursuant to
9 Section 20 of the Securities Act, 15 U.S.C. §§ 77t(d)(2), and Section 21 of the Exchange Act, 15
10 U.S.C. § 78u(d)(3). Defendant shall make this payment within ten (10) business days after entry of
11 this Final Judgment by certified check, bank cashier's check, or United States postal money order
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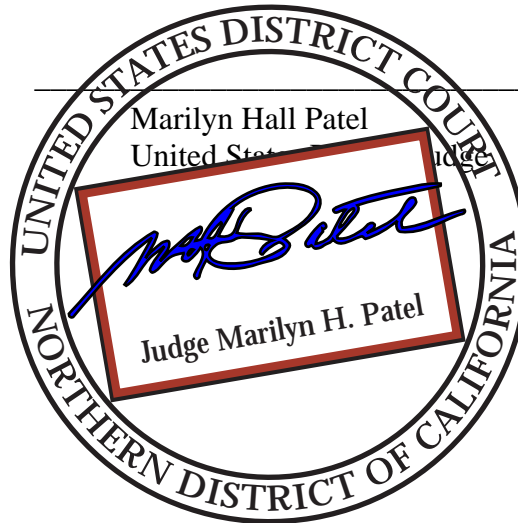
22 VI.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
24 jurisdiction of this matter for the purpose of enforcing the terms of this Order and for all other purposes.
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DATED: 03/27/08



UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SCHMIDT, et al,

Defendant.

Case Number: CV05-05171 MHP


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 28, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gary Gilnet
11 Arbaledo
Walnut Creek, CA 94598

Dated: March 28, 2008


Richard W. Wieking, Clerk
By: R.B. Espinosa, Deputy Clerk

1 HELANE L. MORRISON (Cal. Bar No. 127752)
SUSAN F. LAMARCA (Cal. Bar No. 215231)
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4 response, and having found good cause therefrom, granted the Commission's motion during the
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8 interstate commerce, or of the mails, or of a national securities exchange, in connection
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11 facts necessary to make the statements made true, in light of the circumstances under
12 which they were made, in violation of Section 10(b) of the Securities Exchange Act of
13 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
14 240.10b-5, and in violation of Section 17(a) of the Securities Act of 1933 ("Securities
15 Act"), 15 U.S.C. § 77q(a); and,
- 16 3) Defendant Gelnette, directly or indirectly, in the absence of any applicable exemption, and
17 without any registration statement filed with the Commission or in effect as to the
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20 violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c).

21 According, pursuant to Rules 54(b) and 65(d) of the Federal Rules of Civil Procedure:

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27 Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
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 22 to the Commission's counsel in this action (addressed to Helene L. Morrison, Securities and
 23 Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California, 94104). The
 24 Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment
 25 System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These
 26 funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held
 27 in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914
 28 and the guidelines set by the Director of the Administrative Office of the United States Courts, the

1 Clerk is directed, without further order of this Court, to deduct from the income earned on the money
 2 in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed
 3 that authorized by the Judicial Conference of the United States. The Commission may propose a plan
 4 to distribute the Fund subject to the Court's approval. Defendant shall pay post-judgment interest on
 5 any delinquent amounts pursuant to 28 USC § 1961.

6 V.

7 It Is Further Ordered, Adjudged, And Decreed It Is Further Ordered, Adjudged, And Decreed
 8 that Defendant shall pay a civil penalty in the amount of \$ 500,000.00 pursuant to
 9 Section 20 of the Securities Act, 15 U.S.C. §§ 77t(d)(2), and Section 21 of the Exchange Act, 15
 10 U.S.C. § 78u(d)(3). Defendant shall make this payment within ten (10) business days after entry of
 11 this Final Judgment by certified check, bank cashier's check, or United States postal money order
 12 payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the
 13 Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432
 14 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter
 15 identifying Gary L. Gelnette as a defendant in this action; setting forth the title and civil action
 16 number of this action and the name of this Court; and specifying that payment is made pursuant to
 17 this Final Judgment. Defendant shall simultaneously transmit a photocopy of the payment and letter
 18 to the Commission's counsel in this action (addressed to Helane L. Morrison, Securities and
 19 Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California, 94104).
 20 Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.
 21 The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

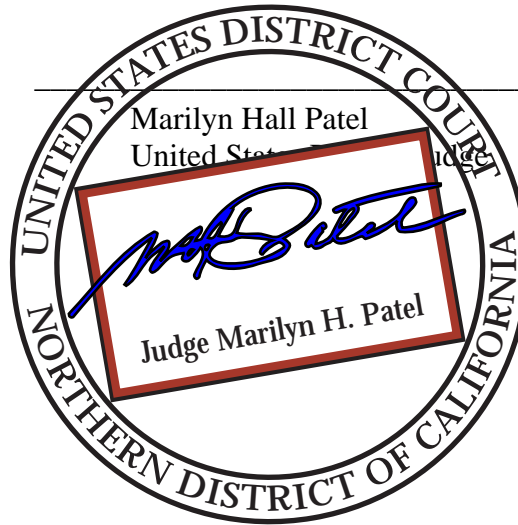
22 VI.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
 24 jurisdiction of this matter for the purpose of enforcing the terms of this Order and for all other purposes.
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 27
 28

VII.

There being no just reason for delay, the Clerk is hereby directed to enter this Final Judgment against Defendant Gelnette forthwith and without delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

DATED: 03/27/08



UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SCHMIDT, et al,

Defendant.

Case Number: CV05-05171 MHP


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 28, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gary Gilnet
11 Arbaledo
Walnut Creek, CA 94598

Dated: March 28, 2008


Richard W. Wieking, Clerk
By: R.B. Espinosa, Deputy Clerk