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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 Yuri B. Zelinsky (MD Bar #23450)  
2 Lawrence C. Renbaum (DC Bar #450015)  
3 Paul G. Lane (Lead Counsel)(DC Bar #428821)  
4 Securities and Exchange Commission  
5 100 F Street, N.E.  
6 Washington, D.C. 20549  
7 Telephone: (202) 551-4768 (Lead Counsel)  
8 Facsimile: (202) 772-9236

9 Attorneys for Plaintiff  
10 Securities and Exchange Commission

11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

**06 6722**

**MHP**

14 SECURITIES AND EXCHANGE )  
15 COMMISSION, )  
16 )  
17 Plaintiff, )  
18 v. )  
19 ERIC G. BORRMANN, )  
20 )  
21 Defendant. )

22 **Case No.**  
23 **FINAL JUDGMENT**  
24 **GRANTED**

25 **FINAL JUDGMENT AS TO DEFENDANT ERIC G. BORRMANN**

26 The Securities and Exchange Commission having filed a Complaint and Defendant Eric  
27 G. Borrmann ("Borrmann" or "Defendant") having entered a general appearance; consented to  
28 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.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Borrmann and his 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 violating, directly or indirectly, Section 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 interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

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

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Borrmann and his 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 violating Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

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

3 III.

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Borrmann  
5 is liable for disgorgement of \$314,517, representing profits gained as a result of the conduct  
6 alleged in the Complaint, together with prejudgment interest thereon in the amount of \$128,529,  
7 for a total of \$443,046, and a civil penalty in the amount of \$314,517 pursuant to Section 20(d)  
8 of the Securities Act [15 U.S.C. § 77t(d)] and Sections 21(d)(3) and 21A of the Exchange Act  
9 [15 U.S.C. §§ 78u(d)(3) and 78u-1]. Borrmann shall satisfy this obligation by paying \$757,563  
10 within ten (10) business days to the Clerk of this Court, together with a cover letter identifying  
11 Eric G. Borrmann as a defendant in this action; setting forth the title and civil action number of  
12 this action and the name of this Court; and specifying that payment is made pursuant to this Final  
13 Judgment. Borrmann shall simultaneously transmit photocopies of such payment and letter to  
14 Paul G. Lane, Senior Counsel, Division of Enforcement, Securities and Exchange Commission,  
15 100 F Street, N.E., Washington, D.C., 20549-7553, the Commission's counsel in this action. By  
16 making this payment, Borrmann relinquishes all legal and equitable right, title, and interest in  
17 such funds and no part of the funds shall be returned to him. Borrmann shall pay post-judgment  
18 interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

19 The Clerk shall deposit the funds into an interest bearing account with the Court Registry  
20 Investment System ("CRIS") or any other type of interest bearing account that is utilized by the  
21 Court. These funds, together with any interest and income earned thereon (collectively, the  
22 "Fund"), shall be held in the interest bearing account until further order of the Court. In  
23 accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative  
24 Office of the United States Courts, the Clerk is directed, without further order of this Court, to  
25 deduct from the income earned on the money in the Fund a fee not to exceed ten percent of the  
26 income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference  
27 of the United States.

28 The Commission may by motion propose a plan to distribute the Fund subject to the

1 Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair  
2 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether  
3 any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to  
4 this Judgment shall be treated as penalties paid to the government for all purposes, including all  
5 tax purposes. To preserve the deterrent effect of the civil penalty, Borrmann shall not, after  
6 offset or reduction of any award of compensatory damages in any Related Investor Action based  
7 on his payment of disgorgement in this action, argue that he is entitled to, nor shall he further  
8 benefit by, offset or reduction of such compensatory damages award by the amount of any part  
9 of his payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related  
10 Investor Action grants such a Penalty Offset, Borrmann shall, within 30 days after entry of a  
11 final order granting the Penalty Offset, notify the Commission's counsel in this action and pay  
12 the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the  
13 Commission directs. Such a payment shall not be deemed an additional civil penalty and shall  
14 not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes  
15 of this paragraph, a "Related Investor Action" means a private damages action brought against  
16 Borrmann by or on behalf of one or more investors based on substantially the same facts as  
17 alleged in the Complaint in this action.

18 IV.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section  
20 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15  
21 U.S.C. § 78u(d)(2)], Borrmann is prohibited, for five (5) years following the date of entry of this  
22 Final Judgment, from acting as an officer or director of any issuer that has a class of securities  
23 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file  
24 reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

25 V.

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

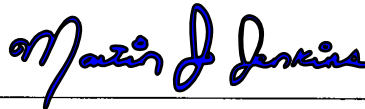
VI.

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.

VII.

There being no cause for delay, the clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

Dated: JANUARY 8, 2007



UNITED STATES DISTRICT JUDGE