

1 MOLLY M. WHITE, Cal. Bar No. 171448
Email: Whitem@sec.gov

2 Attorneys for Plaintiff
3 Securities and Exchange Commission
4 Rosalind Tyson, Regional Director
5 Michele Wein Layne, Associate Regional Director
6 John M. McCoy III, Regional Trial Counsel
7 5670 Wilshire Boulevard, 11th Floor
8 Los Angeles, California 90036
9 Telephone: (323) 965-3998
10 Facsimile: (323) 965-3908

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 **SECURITIES AND EXCHANGE**
14 **COMMISSION,**

15 Plaintiff,

16 vs.

17 **PAUL W. MIKUS and JOHN V.**
18 **CRACCHIOLO,**

19 Defendants.

Case No. SACV 06-734 RSWL (SSx)

**AMENDED FINAL JUDGMENT
OF PERMANENT INJUNCTION
AND OTHER RELIEF AGAINST
DEFENDANT PAUL W. MIKUS
AND DEFENDANT JOHN V.
CRACCHIOLO**

20 The Securities and Exchange Commission having filed a Complaint and
21 Defendants Paul W. Mikus (“Mikus”) and John V. Cracchiolo (“Cracchiolo”)
22 having entered a general appearance; consented to the Court’s jurisdiction over
23 him and the subject matter of this action; consented to entry of this Final Judgment
24 without admitting or denying the allegations of the Complaint (except as to
25 jurisdiction); waived findings of fact and conclusions of law; and waived any right
26 to appeal from this Final Judgment:

27 **I.**

28 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Mikus,
Cracchiolo and their agents, servants, employees, attorneys, and all persons in
active concert or participation with them who receive actual notice of this Final

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

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

13 **II.**

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mikus,
15 Cracchiolo and their agents, servants, employees, attorneys, and all persons in
16 active concert or participation with them who receive actual notice of this Final
17 Judgment by personal service or otherwise are permanently restrained and enjoined
18 from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”),
19 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or
20 instruments of transportation or communication in interstate commerce or by use
21 of the mails, directly or indirectly:

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

1 **III.**

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mikus,
3 Cracchiolo and their agents, servants, employees, attorneys, and all persons in
4 active concert or participation with them who receive actual notice of this Final
5 Judgment by personal service or otherwise are permanently restrained and enjoined
6 from knowingly circumventing or knowingly failing to implement a system of
7 internal accounting controls, or by knowingly falsifying any book, record or
8 account required to be kept by an issuer, in violation of Section 13(b)(5) of the
9 Exchange Act, 15 U.S.C. § 78m(b)(5).

10 **IV.**

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mikus,
12 Cracchiolo and their agents, servants, employees, attorneys, and all persons in
13 active concert or participation with them who receive actual notice of this Final
14 Judgment by personal service or otherwise are permanently restrained and enjoined
15 from aiding and abetting an any violation of Section 13(a) of the Exchange Act, 15
16 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, 17
17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13, by knowingly
18 providing substantial assistance to an issuer in filing with the Commission required
19 periodic reports or registration statements, which fail to include material
20 information necessary to make the required statements, in light of the
21 circumstances under which they are made, not misleading.

22 **V.**

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Mikus,
24 Cracchiolo and their agents, servants, employees, attorneys, and all persons in
25 active concert or participation with them who receive actual notice of this Final
26 Judgment by personal service or otherwise are permanently restrained and enjoined
27 from aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act,
28 15 U.S.C. §§ 78m(b)(2)(A), and violating Rule 13b2-1, 17 C.F.R. § 240.13b2-1,

1 thereunder, by knowingly providing substantial assistance to an issuer that failed to
2 make and keep books, records, and accounts, which, in reasonable detail,
3 accurately and fairly reflect the transactions and disposition of the assets of the
4 issuer.

5 **VI.**

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Mikus,
7 Cracchiolo and their agents, servants, employees, attorneys, and all persons in
8 active concert or participation with them who receive actual notice of this Final
9 Judgment by personal service or otherwise are permanently restrained and enjoined
10 from aiding and abetting any violation of Sections 13(b)(2)(B) of the Exchange
11 Act, 15 U.S.C. §§ 78m(b)(2)(B), by knowingly providing substantial assistance to
12 an issuer which has a class of securities registered pursuant to Section 12 of the
13 Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
14 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d), in failing to devise and
15 maintain a sufficient system of internal accounting controls sufficient to provide
16 reasonable assurances that:

- 17 a. transactions are executed in accordance with management's
18 general or specific authorization;
- 19 b. transactions are recorded as necessary (i) to permit preparation
20 of financial statements in conformity with generally accepted
21 accounting principles or any other criteria applicable to such
22 statements, and (ii) to maintain accountability for assets;
- 23 c. access to assets is permitted only in accordance with
24 management's general or specific authorization; and
- 25 d. the recorded accountability for assets is compared with the
26 existing assets at reasonable intervals and appropriate action is
27 taken with respect to any differences..
- 28

1 **VII.**

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mikus,
3 Cracchiolo and their agents, servants, employees, attorneys, and all persons in
4 active concert or participation with them who receive actual notice of this Final
5 Judgment by personal service or otherwise are permanently restrained and enjoined
6 from violating, directly or indirectly, Exchange Act Rule 13b2-2, 17 C.F.R. §
7 240.13b2-2, by:

- 8
- 9 a. making or causing to be made materially false or misleading
 - 10 statements to accountants in connection with; or
 - 11 b. omitting to state, or causing another person to omit to state, any
 - 12 material fact necessary in order to make statements made, in light of
 - 13 the circumstances under which such statements are made, not
 - 14 misleading, to an accountant in connection with:
 - 15 i. any audit, review or examination of the financial statements of
 - 16 the issuer required to be made; or
 - 17 ii. the preparation or filing of a document or report required to be
 - 18 filed with the Commission.
- 19

20 **VIII.**

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

IX.

1
2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
3 Cracchiolo is liable for disgorgement of \$60,715, representing profits gained as a
4 result of the conduct alleged in the Complaint, together with prejudgment interest
5 thereon in the amount of \$10,378.69 and a civil penalty in the amount of \$50,000
6 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section
7 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), for a total of \$121,093.69.
8 Cracchiolo shall satisfy this obligation by paying \$25,000.00 within ten (10)
9 business days after entry of this Final Judgment, and by paying the remaining
10 balance of \$96,093.69 in four installments as follows: (1) \$24,023.43 plus \$135.06
11 in post-judgment interest, for a total payment of \$24,158.49, within 90 days of
12 entry of the Final Judgment; (2) \$24,023.42 plus \$270.12 in post-judgment interest,
13 for a total payment of \$24,293.54, within 180 days of entry of the Final Judgment;
14 (3) \$24,023.42 plus \$405.17 in post-judgment interest, for a total payment of
15 \$24,428.59, within 270 days of entry of the Final Judgment; and (4) \$24,023.42
16 plus \$547.73 in post-judgment interest, for a total payment of \$24,563.65, within
17 360 days of entry of the Final Judgment. If Cracchiolo fails to make any payment
18 according to the payment plan set forth above in this paragraph, the payment plan
19 shall become null and void, and all amounts due under the Final Judgment minus
20 any payments made shall become due and payable immediately. Cracchiolo shall
21 make each payment by certified check, bank cashier's check, or United States
22 postal money order payable to the Securities and Exchange Commission. The
23 payment shall be delivered or mailed to the Office of Financial Management,
24 Securities and Exchange Commission, Operations Center, 6432 General Green
25 Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a
26 letter identifying Cracchiolo as a defendant in this action; setting forth the title and
27 civil action number of this action and the name of this Court; and specifying that
28 payment is made pursuant to this Final Judgment. Cracchiolo shall pay post-

1 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The
2 Commission shall remit the funds paid pursuant to this paragraph to the United
3 States Treasury.

4 **X.**

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

9 **XI.**

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

13 **XII.**

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

17
18 Dated: January 13, 2009



19
20 HONORABLE RONALD S.W. LEW
Senior, U.S. District Court Judge

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On January 9, 2009, I caused to be served the following document entitled **[PROPOSED] AMENDED FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST DEFENDANT PAUL W. MIKUS AND DEFENDANT JOHN V. CRACCHIOLO** on all the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

FEDERAL EXPRESS: By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

(Federal) I declare under penalty of perjury that I am a member of the bar of this Court and that the foregoing is true and correct.

Date: January 9, 2009

/s/ Molly M. White
Molly M. White

1 **SEC v. PAUL W. MIKUS and JOHN V. CRACCHIOLO**
2 **United States District Court – Central District of California**
3 **Case No. SACV 06-734 RSWL (SSx)**
4 **(LA-2659)**

5 **SERVICE LIST**

6 Russell D. Duncan, Esq. **(by electronic and U.S. mail)**
7 Orrick, Herrington & Sutcliffe LLP
8 Washington Harbour
9 3050 K Street, N.W.
10 Washington, D.C. 20007-5135
11 Email: rduncan@orrick.com
12 *Attorney for Defendant Paul W. Mikus*

13 Walter F. Brown, Jr., Esq. **(by electronic and U.S. mail)**
14 Tarek J. Helou, Esq.
15 Orrick, Herrington & Sutcliffe LLP
16 The Orrick Building, 405 Howard Street
17 San Francisco, CA 94105
18 Email: wbrown@orrick.com
19 Email: thelou@orrick.com
20 *Attorneys for Defendant Paul W. Mikus*

21 Susan Resley, Esq. **(by electronic and U.S. mail)**
22 Orrick, Herrington & Sutcliffe LLP
23 1000 Marsh Road
24 Menlo Park, CA 94025
25 Email: sresley@orrick.com
26 *Attorney for Defendant Paul W. Mikus*

27 Thomas H. Bienert, Jr., Esq. **(by electronic and U.S. mail)**
28 Bienert & Miller
29 115 Avenida Miramar
30 San Clemente, CA 92672
31 Email: tom@bmattorneys.com
32 *Attorney for Defendant Paul W. Mikus*

33 John M. Potter, Esq. **(by electronic and U.S. mail)**
34 Rachel H. Smith, Esq.
35 Quinn Emanuel Urquhart Oliver & Hedges, LLP
36 50 California Street, 22nd Floor
37 San Francisco, CA 94111
38 Email: johnpotter@quinnemanuel.com
39 Email: rachelsmith@quinnemanuel.com
40 *Attorneys for Defendant John V. Cracchiolo*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Patrick C. Doolittle, Esq. **(by electronic and U.S. mail)**
Quinn Emanuel Urquhart Oliver & Hedges, LLP
555 Twin Dolphin Dr., Suite 560
Redwood Shores, CA 94065
Email: patrickdoolittle@quinnemanuel.com
Attorney for Defendant John V. Cracchiolo

Andrew Stolper, AUSA **(by U.S. mail)**
U.S. Department of Justice
United States Courthouse
411 West Fourth Street, Suite 8000
Santa Ana, CA 92701-4599
Telephone: (714) 338-3536
Facsimile: (714) 338-3708