

1 ROBERT L. MITCHELL (Cal. Bar No. 161354)  
2 MARC J. FAGEL (Cal. Bar No. 154425)  
3 MICHAEL S. DICKE (Cal. Bar No. 158187)  
4 SHEILA E. O'CALLAGHAN (Cal. Bar No. 131032)  
5 SAHIL W. DESAI (Cal. Bar No. 197358)

6 Attorneys for Plaintiff  
7 SECURITIES AND EXCHANGE COMMISSION  
8 44 Montgomery Street, Suite 2600  
9 San Francisco, California 94104  
10 Telephone: (415) 705-2500  
11 Facsimile: (415) 705-2501

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 SECURITIES AND EXCHANGE COMMISSION, Case No. **C 07 2214**  
16 Plaintiff,  
17 vs.  
18 FRED D. ANDERSON,  
19 Defendant.

**[PROPOSED] FINAL JUDGMENT AS TO  
FRED D. ANDERSON**

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

26 I.

27 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's  
28 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 Sections 17(a)(2) and (3) of the Securities Act of 1933

**[PROPOSED] FINAL JUDGMENT**

**FILED**

MAY - 4 2007

RICHARD W. WATSON  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

RECEIVED  
07 APR 24 AM 9:12  
RICHARD W. WATSON  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

HRL

9  
L.M.

1 (“Securities Act”) [15 U.S.C. § 77q(a)] by obtaining money or property by means of untrue  
2 statements of material fact or by omitting to state a material fact necessary in order to make the  
3 statements made, in light of the circumstances under which they were made, not misleading; or  
4 engaging in any transaction, practice, or course of business which operates or would operate as a  
5 fraud or deceit upon the purchaser in the offer or sale of any securities by the use of any means or  
6 instrumentality of interstate commerce, or of the mails.

7 II.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant’s  
9 agents, servants, employees, attorneys, and all persons in active concert or participation with them  
10 who receive actual notice of this Final Judgment by personal service or otherwise are permanently  
11 restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Securities  
12 Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13  
13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1] by knowingly providing substantial  
14 assistance to an issuer which has a class of securities registered pursuant to Section 12 of the  
15 Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] in failing to  
16 file with the Commission such accurate and complete information, reports, and documents as are  
17 required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §  
18 78m(a)] and the Commission’s Rules thereunder, including but not limited to, quarterly reports on  
19 Form 10-Q [17 C.F.R. § 249.308a] as prescribed by Commission Rule 13a-13 [17 C.F.R. § 240.13a-  
20 13], annual reports on Form 10-K [17 C.F.R. § 249.308] as prescribed by Commission Rule 13a-1  
21 [17 C.F.R. § 240.13a-1], such information and documents to contain, in addition to such information  
22 as is expressly required to be included in a statement or report to the Commission, such further  
23 material information, if any, as may be necessary to make the required statements, in the light of the  
24 circumstances under which they are made, not misleading, as prescribed by Commission Rule 12b-20  
25 [17 C.F.R. § 240.12b-20].

26 III.

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant’s  
28 agents, servants, employees, attorneys, and all persons in active concert or participation with them

1 who receive actual notice of this Final Judgment by personal service or otherwise are permanently  
2 restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of the  
3 Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by causing any issuer which has a class of securities  
4 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or Section 15(d) of the  
5 Exchange Act [15 U.S.C. § 78o] to fail to make or keep books, records or accounts, which, in  
6 reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the  
7 issuer.

8 IV.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's  
10 agents, servants, employees, attorneys, and all persons in active concert or participation with them  
11 who receive actual notice of this Final Judgment by personal service or otherwise are permanently  
12 restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(B) of the  
13 Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by causing any issuer which has a class of securities  
14 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or Section 15(d) of the  
15 Exchange Act [15 U.S.C. § 78o] to fail to devise and maintain a system of internal accounting  
16 controls sufficient to provide reasonable assurances that:

17 A. transactions are executed in accordance with management's general or specific  
18 authorization;

19 B. transactions are recorded as necessary (i) to permit preparation of financial statements in  
20 conformity with generally accepted accounting principles or any other criteria applicable to such  
21 statements, and (ii) to maintain accountability for assets;

22 C. access to assets is permitted only in accordance with management's general or specific  
23 authorization; and

24 D. the recorded accountability for assets is compared with the existing assets at reasonable  
25 intervals and appropriate action is taken with respect to any differences.

26 V.

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's  
28 agents, servants, employees, attorneys, and all persons in active concert or participation with them

1 who receive actual notice of this Final Judgment by personal service or otherwise are permanently  
2 restrained and enjoined from violating Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2]  
3 by making or causing to be made a materially false or misleading statement, or by omitting to state or  
4 causing another person to omit to state, any material fact necessary in order to make statements made,  
5 in light of the circumstances under which such statements were made, not misleading, to an  
6 accountant in connection with (A) any audit or examination of the financial statements of an issuer  
7 required to be made pursuant to the federal securities laws or (B) the preparation or filing of any  
8 document or report required to be filed with the Commission pursuant to the federal securities laws or  
9 otherwise.

10 VI.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's  
12 agents, servants, employees, attorneys, and all persons in active concert or participation with them  
13 who receive actual notice of this Final Judgment by personal service or otherwise are permanently  
14 restrained and enjoined from aiding and abetting any violation of Section 14(a) of the Exchange Act  
15 [15 U.S.C. § 78n(a)] and Rule 14a-9 promulgated thereunder [17 C.F.R. § 240.14a-9] by making or  
16 causing to be made solicitations by means of a proxy statement, form of proxy, notice of meeting or  
17 other communication, written or oral, containing a statement which, at the time and in the light of the  
18 circumstances under which it was made, was false or misleading with respect to any material fact, or  
19 which omitted to state any material fact necessary in order to make the statements therein not false or  
20 misleading or necessary to correct any statement in any earlier communication with respect to the  
21 solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

22 VII.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's  
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 Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and  
27 Rule 16a-3 promulgated thereunder [17 C.F.R. § 240.16a-3] by failing to timely file with the  
28 Commission the required Forms 3 [17 C.F.R. § 249.103], Initial Statement of Beneficial Ownership

1 of Securities, Forms 4 [17 C.F.R. § 249.104], Statement of Changes in Beneficial Ownership of  
2 Securities, and Forms 5 [17 C.F.R. § 249.105], Annual Statement of Beneficial Ownership of  
3 Securities.

4 VIII.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for  
6 disgorgement of \$2,953,125.00, representing alleged profits gained as a result of the conduct alleged  
7 in the Complaint, together with prejudgment interest thereon in the amount of \$528,107.86, for a total  
8 of \$3,481,232.86. Defendant shall satisfy this obligation by paying \$3,481,232.86 within ten (10)  
9 business days after entry of this Final Judgment by certified check, bank cashier's check, or United  
10 States postal money order payable to the Securities and Exchange Commission. The payment shall  
11 be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission,  
12 Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall  
13 be accompanied by a letter identifying Fred D. Anderson as a defendant in this action; setting forth  
14 the title and civil action number of this action and the name of this Court; and specifying that  
15 payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit  
16 photocopies of such payment and letter to the attention of Marc J. Fagel, Associate District  
17 Administrator, at the Commission's San Francisco District Office, 44 Montgomery Street, Suite  
18 2600, San Francisco, CA 94104. Defendant shall pay post-judgment interest on any delinquent  
19 amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this  
20 paragraph to the United States Treasury.

21 IX.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil  
23 penalty in the amount of \$150,000.00 pursuant to Section 20(d) of the Securities Act [15 U.S.C. §  
24 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall make this  
25 payment within ten (10) business days after entry of this Final Judgment by certified check, bank  
26 cashier's check, or United States postal money order payable to the Securities and Exchange  
27 Commission. The payment shall be delivered or mailed to the Office of Financial Management,  
28 Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3,

1 Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Fred D. Anderson as a  
2 defendant in this action; setting forth the title and civil action number of this action and the name of  
3 this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall  
4 simultaneously transmit photocopies of such payment and letter to the attention of Marc J. Fagel,  
5 Associate District Administrator, at the Commission's San Francisco District Office, 44 Montgomery  
6 Street, Suite 2600, San Francisco, CA 94104. Defendant shall pay post-judgment interest on any  
7 delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant  
8 to this paragraph to the United States Treasury.

9 X.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant  
11 Fred D. Anderson To Entry Of Final Judgment is incorporated herein with the same force and effect  
12 as if fully set forth herein, and that Defendant shall comply with all of the undertakings and  
13 agreements set forth therein.

14 ///

15 ///

16 ///

17

18

19

20

21

22

23

24

25

26

27

28

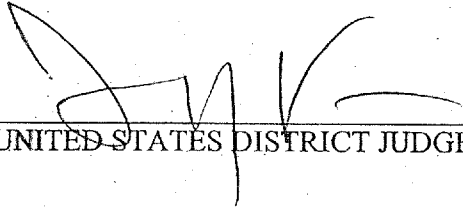
XI.

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.

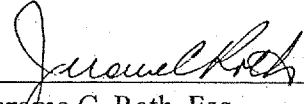
XII.

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: 5-4-07


  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

 3/8/07  
Jerome C. Roth, Esq.  
Munger, Tolles & Olson LLP  
560 Mission Street, 27<sup>th</sup> Floor  
San Francisco, California 94105  
(415) 512-4000  
Attorney for Defendant

Attorney for Defendant FRED D. ANDERSON

SUBMITTED BY:

  
Robert L. Mitchell  
Marc J. Fagel  
Michael S. Dicke  
Sheila E. O'Callaghan  
Sahil W. Desai  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION