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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
OCT 21 2011~~

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MARK LESLIE, KENNETH E. LONCHAR,
PAUL A. SALLABERRY, MICHAEL M.
CULLY, and DOUGLAS S. NEWTON

Defendants.

Case No. 5:07-cv-03444-JF

**FINAL JUDGMENT AS TO
DEFENDANT MARK LESLIE**

Hon. Jeremy Fogel

The Securities and Exchange Commission having filed an amended complaint and
Defendant MARK LESLIE, having entered a general appearance; consented to 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 amended complaint (except as to
jurisdiction to which Defendant consents); waived findings of fact and conclusions of law; and
waived any right to appeal from this Final Judgment:

FINAL JUDGMENT AS TO
DEFENDANT MARK LESLIE

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2 I.
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4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
5 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
6 participation with them who receive actual notice of this Final Judgment by personal service or
7 otherwise are permanently restrained and enjoined from violating Rule 13b2-2(a)(2) of the
8 Securities Exchange Act of 1934 (the "Exchange Act") [17 C.F.R. § 240.13b2-2(a)(2)] by,
9 directly or indirectly, in the capacity of a director or officer of an issuer, omitting to state, or
10 causing another person to omit to state, any material fact necessary in order to make statements
11 made, in light of the circumstances under which the statements were made, not misleading to an
12 accountant in connection with (1) any audit, review or examination of the financial statements of
13 the issuer required to be made; or (2) the preparation or filing of any document or report to be
14 filed with the Commission pursuant to the rules promulgated under Section 13 of the Exchange
15 Act or otherwise.

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17 II.
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19 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
20 is liable for a total payment consisting of disgorgement and prejudgment interest of \$1,550,000,
21 the total amount representing profits gained as a result of the conduct alleged in the amended
22 complaint plus prejudgment interest thereon, and a civil penalty in the amount of \$25,000
23 pursuant to Section 21(d) of the Exchange Act. Defendant shall satisfy this obligation by paying
24 \$1,575,000 within 14 days after entry of this Final Judgment to the Clerk of this Court, together
25 with a cover letter identifying Defendant's name as a defendant in this action; setting forth the
26 title and civil action number of this action and the name of this Court; and specifying that
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1 payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit
 2 photocopies of such payment and letter to the Commission's counsel in this action. By making
 3 the above-referenced payment, Defendant relinquishes all legal and equitable right, title, and
 4 interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall
 5 pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.
 6

7 The Clerk shall deposit the funds into an interest bearing account with the Court Registry
 8 Investment System ("CRIS") or any other type of interest bearing account that is utilized by the
 9 Court. These funds, together with any interest and income earned thereon (collectively, the
 10 "Fund"), shall be held in the interest bearing account until further order of the Court. In
 11 accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative
 12 Office of the United States Courts, the Clerk is directed, without further order of this Court, to
 13 deduct from the income earned on the money in the Fund a fee equal to ten percent of the income
 14 earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the
 15 United States.
 16

17 The Commission may by motion propose a plan to distribute the Fund subject to the
 18 Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair
 19 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any
 20 such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this
 21 Judgment shall be treated as penalties paid to the government for all purposes, including all tax
 22 purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or
 23 reduction of any award of compensatory damages in any Related Investor Action based on
 24 Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he
 25 further benefit by, offset or reduction of such compensatory damages award by the amount of any
 26 part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any
 27 28

1 Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry
2 of a final order granting the Penalty Offset, notify the Commission's counsel in this action and
3 pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the
4 Commission directs. Such a payment shall not be deemed an additional civil penalty and shall
5 not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes
6 of this paragraph, a "Related Investor Action" means a private damages action brought against
7 Defendant by or on behalf of one or more investors based on substantially the same facts as
8 alleged in the amended complaint in this action.

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11 III.

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

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17 IV.

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

V.

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: U&G à^!ÁGF, 2011


HON. JEREMY FOGEL
UNITED STATES DISTRICT JUDGE