

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**DARYN P. FLEMING
and MATHEW C. BRUCE**

Defendants.

) CIVIL ACTION

) FILE NO. CV-08-029-RHW

) FINAL JUDGMENT

) AGAINST DEFENDANT

) DARYN P. FLEMING

Plaintiff, U.S. Securities and Exchange Commission ("SEC") filed a

complaint in this matter, and Defendant Daryn P. Fleming ("Defendant Fleming")

has, in his Consent hereto and incorporated herein, acknowledged receipt of the

complaint and admitted the personal jurisdiction of the Court over him and over the

subject matter thereof, and without admitting or denying the allegations of the

complaint, except as to jurisdiction, and without trial, argument or adjudication of

1 any facts or law herein, consented to the entry of this Final Judgment Against
2 Defendant Fleming ("Final Judgment"). The SEC and Defendant Fleming have
3 waived the entry of findings of fact and conclusions of law, as provided by Rule 52
4 of the Federal Rules of Civil Procedure and Defendant Fleming has waived any
5 right to appeal from this Final Judgment. The Court having jurisdiction over the
6 parties and the subject matter hereof, and being fully advised in the premises,
7 hereby states:

8 **I.**

9 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that
10 Defendant Fleming, his officers, agents, servants, employees, attorneys, assigns,
11 and all persons in active concert or participation with him who receive actual notice
12 of this Final Judgment by personal service or otherwise, and each of them are
13 permanently restrained and enjoined from, directly or indirectly, in connection with
14 the purchase or sale of any security, by the use of any means or instrumentality of
15 interstate commerce, or of the mails, or any facility of any national securities
16 exchange:

17 (a) employing any device, scheme or artifice to defraud; or

18 (b) making any untrue statement of material fact or omitting to state a
19 material fact necessary in order to make the statements made, in light

1 of the circumstances under which they were made, not misleading; or
2 (c) engaging in any act, practice or course of business which operates or
3 would operate as a fraud or deceit upon any person, in violation of
4 Section 10(b) of the Securities Exchange Act of 1934 ("Exchange
5 Act") [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder [17
6 C.F.R. §240.10b-5].

7 **II.**

8 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that,
9 pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)],
10 Defendant Fleming is prohibited from acting as an officer or director of any issuer
11 that has a class of securities registered pursuant to Section 12 of the Exchange Act
12 [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the
13 Exchange Act [15 U.S.C. § 78o(d)].

14 **III.**

15 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED**
16 that Defendant Fleming is liable for disgorgement of \$20,844, representing profits
17 gained as a result of the conduct alleged in the Complaint, together with
18 prejudgment interest thereon in the amount of \$3,865 and a civil penalty in the
19 amount of \$35,000 pursuant to Section 21(d) of the Exchange Act. Defendant

1 Fleming shall satisfy this obligation by paying \$59,709 pursuant to the terms of the
2 payment schedule set forth in paragraph IV below to the Clerk of this Court,
3 together with a cover letter identifying Defendant Fleming as a defendant in this
4 action; setting forth the title and civil action number of this action and the name of
5 this Court; and specifying that payment is made pursuant to this Final Judgment.
6 Defendant Fleming shall simultaneously transmit photocopies of such payment and
7 letter to the Commission's counsel in this action. By making this payment,
8 Defendant Fleming relinquishes all legal and equitable right, title, and interest in
9 such funds, and no part of the funds shall be returned to Defendant Fleming.
10 Defendant Fleming shall pay post-judgment interest on any delinquent amounts
11 pursuant to 28 USC § 1961.

12 The Clerk shall deposit the funds into an interest bearing account with the
13 Court Registry Investment System ("CRIS") or any other type of interest bearing
14 account that is utilized by the Court. These funds, together with any interest and
15 income earned thereon (collectively, the "Fund"), shall be held in the interest
16 bearing account until further order of the Court. In accordance with 28 U.S.C.
17 § 1914 and the guidelines set by the Director of the Administrative Office of the
18 United States Courts, the Clerk is directed, without further order of this Court, to
19 deduct from the income earned on the money in the Fund a fee equal to ten percent

1 of the income earned on the Fund. Such fee shall not exceed that authorized by the
2 Judicial Conference of the United States.

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

1 change the amount of the civil penalty imposed in this Judgment. For purposes of
2 this paragraph, a "Related Investor Action" means a private damages action brought
3 against Defendant Fleming by or on behalf of one or more investors based on
4 substantially the same facts as alleged in the Complaint in this action.

5
6 **IV.**

7 Defendant Fleming shall pay \$59,709 in four installments according to the
8 following schedule: (1) \$25,000, within five days of entry of this Final Judgment;
9 (2) \$11,570 within 120 days of entry of this Final Judgment; (3) \$11,570 within 240
10 days of entry of this Final Judgment; and (4) \$11,570 within 360 days of entry of
11 this Final Judgment. If Defendant Fleming fails to make any payment by the date
12 agreed and/or in the amount agreed according to the schedule set forth above, all
13 outstanding payments under this Final Judgment, including post-judgment interest,
14 minus any payments made, shall become due and payable immediately without
further application to the Court.

15
16 **V.**

17 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
18 Defendant Fleming's Consent is incorporated herein with the same force and effect
19 as if fully set forth herein, and that Defendant Fleming shall comply with all of the
undertakings and agreements set forth herein.

