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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHN EARL BRAKE,

Defendant.

Case No. CV 08 4089 BZ

~~[PROPOSED]~~ FINAL JUDGMENT AS TO
DEFENDANT JOHN EARL BRAKE

The Securities and Exchange Commission having filed a Complaint and Defendant John Earl Brake (“Brake” or “Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Brake 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 Brake and his agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of

1 | them, are permanently enjoined and restrained from, directly or indirectly, violating, or aiding and
2 | abetting violations of, Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15
3 | U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder by:

- 4 | 1. employing any device, scheme, or artifice to defraud;
- 5 | 2. making any untrue statement of a material fact or omitting to state a material fact
6 | necessary in order to make the statements made, in the light of the circumstances
7 | under which they were made, not misleading; or
- 8 | 3. engaging in any act, practice, or course of business which operates or would operate as
9 | a fraud or deceit upon any person,

10 | in connection with the purchase or sale of the securities of any issuer, by the use of any means or
11 | instrumentality of interstate commerce, or of the mails, or of any facility of any national securities
12 | exchange.

13 | II.

14 | IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and
15 | Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation
16 | with them who receive actual notice of this Final Judgment by personal service or otherwise are
17 | permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the
18 | “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or
19 | instruments of transportation or communication in interstate commerce or by use of the mails,
20 | 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 material fact or any
24 | omission of a material fact necessary in order to make the statements made, in light of the
25 | circumstances under which they were made, not misleading; or
- 26 | (c) to engage in any transaction, practice, or course of business which operates or
27 | would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$5,000,000 representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,327,291, with all but \$1,200,000 waived. Based on Defendant's sworn representations in his Statement of Financial Condition dated August 11, 2009, and other documents and information submitted to the Commission, the Court is not ordering Defendant to pay a civil penalty and payment of all but \$1,200,000 of the disgorgement and pre-judgment interest thereon is waived. After entry of this Final Judgment, Defendant shall satisfy this obligation by paying pursuant to the terms of the payment schedule set forth in paragraph IV below by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying John Earl Brake as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

IV.

John Earl Brake shall pay \$1,200,000.00 in three installments according to the following schedule: (1) \$40,000, within ten days of entry of this Final Judgment; (2) \$40,000 within ninety days of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961; and (3) \$1,120,000 within one year of the date of entry of this Final Judgment plus post-judgment interest pursuant to 28 U.S.C. § 1961.

