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THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SECURITIES AND EXCHANGE COMMISSION,

Civil Action No. C 09-0960 RAJ

Plaintiff,

FINAL JUDGMENT AS TO DEFENDANT
DAVID M. OTTO

vs.

DAVID M. OTTO, TODD VAN SICLEN,
MITOPHARM CORPORATION, PAK PETER
CHEUNG, WALL STREET PR, INC., and
CHARLES BINGHAM,

Defendants.

FINAL JUDGMENT AS TO DEFENDANT DAVID M. OTTO

The Securities and Exchange Commission having filed a Complaint and Defendant David M. Otto 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 Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant and Defendant's
2 agents, servants, employees, attorneys, and all persons in active concert or participation with them
3 who receive actual notice of this Final Judgment by personal service or otherwise are permanently
4 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities
5 Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated
6 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or
7 of the mails, or of any facility of any national securities exchange, in connection with the purchase or
8 sale of any security:

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

15 II.

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

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

3 III.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and
5 Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation
6 with them who receive actual notice of this Final Judgment by personal service or otherwise are
7 permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e]
8 by, directly or indirectly, in the absence of any applicable exemption:

- 9 (a) Unless a registration statement is in effect as to a security, making use of any means or
10 instruments of transportation or communication in interstate commerce or of the mails
11 to sell such security through the use or medium of any prospectus or otherwise;
12 (b) Unless a registration statement is in effect as to a security, carrying or causing to be
13 carried through the mails or in interstate commerce, by any means or instruments of
14 transportation, any such security for the purpose of sale or for delivery after sale; or
15 (c) Making use of any means or instruments of transportation or communication in
16 interstate commerce or of the mails to offer to sell or offer to buy through the use or
17 medium of any prospectus or otherwise any security, unless a registration statement
18 has been filed with the Commission as to such security, or while the registration
19 statement is the subject of a refusal order or stop order or (prior to the effective date of
20 the registration statement) any public proceeding or examination under Section 8 of
21 the Securities Act [15 U.S.C. § 77h].

22 IV.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and
24 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
25 participation with them who receive actual notice of this Final Judgment by personal service or
26 otherwise are permanently restrained and enjoined from violating Section 16(a) of the Exchange
27 Act [15 U.S.C. § 78p(a)] and Rule 16a-3 promulgated thereunder [17 C.F.R. § 240.16a-3] by,
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1 directly or indirectly, failing to file accurate statements with the Commission regarding beneficial
2 ownership of more than 10 percent of any class of any equity security which is registered
3 pursuant to Section 12 of the Exchange Act.

4 V.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is barred for a
6 period of five (5) years from entry of this Final Judgment from participating in an offering of penny
7 stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading,
8 or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any
9 equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the
10 Exchange Act [17 C.F.R. 240.3a51-1].

11 VI.

12
13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for
14 disgorgement of \$38,610.18, as a result of the conduct alleged in the Complaint, together with
15 prejudgment interest thereon in the amount of \$6,751.18, and a civil penalty in the amount of
16 \$180,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §§ 77t(d)] and Section 21(d)(3)
17 of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation, pursuant to the
18 terms of the payment schedule set forth in paragraph VII below, by certified check, bank cashier's
19 check, or United States postal money order payable to the Securities and Exchange Commission. The
20 payment shall be delivered or mailed to the Office of Financial Management, Securities and
21 Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria,
22 Virginia 22312, and shall be accompanied by a letter identifying David M. Otto as a defendant in this
23 action; setting forth the title and civil action number of this action and the name of this Court; and
24 specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment
25 interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the
26 funds paid pursuant to this paragraph to the United States Treasury.

VII.

Defendant shall pay the total obligation of \$225,361.36 in five (5) installments according to the following schedule: (1) \$25,361.36 within 14 days of entry of this Final Judgment; (2) \$50,000.00 within three (3) months of entry of this Final Judgment; (3) \$50,000.00 within six (6) months of entry of this Final Judgment; (4) \$50,000.00 within nine (9) months of entry of this Final Judgment; and (5) \$50,000.00 within one year of entry of this Final Judgment.

If David M. Otto fails to make any payment by the date agreed or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately without further application to the Court.

VIII.

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

IX.

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.

X.

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: April 11, 2011.



The Honorable Richard A. Jones
United States District Judge

1 Approved as to form:
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3 /s/ Robert S. Mahler

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13 Submitted by:
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