

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

RADICAL BUNNY, LLC; TOM HIRSCH;  
BERTA WALDER; HOWARD WALDER;  
and HARISH P. SHAH;

Defendants.

Case No. CIV-09-01560-PHX-SRB

**FINAL JUDGMENT OF PERMANENT  
INJUNCTION AND MONETARY  
RELIEF AGAINST DEFENDANTS  
TOM HIRSCH, BERTA WALDER,  
HOWARD WALDER, AND HARISH  
P. SHAH**

The motion of plaintiff Securities and Exchange Commission (“Commission”), pursuant to Fed. R. Civ. P. 56, for summary judgment against defendants Tom Hirsch (“Hirsch”), Berta Walder (“Berta Walder”), Howard Walder (“Howard Walder”), and Harish P. Shah (“Shah”) (collectively the “Defendants”) came before the Court as did the Defendants’ cross-motion for summary judgment against the Commission. On April 12, 2011, the Court issued an Order granting the Commission’s motion for summary judgment against the Defendants, denying the Defendants’ cross-motion for summary judgment against the Commission, ordering that the Defendants be enjoined from committing future violations of the securities registration, antifraud, and broker-dealer registration provisions of the federal securities laws, ordering the Defendants pay disgorgement (Hirsch in the amount of \$1,245,220, Berta and Howard Walder in the

1 amount of \$1,245,217, and Shah in the amount of \$740,160) plus prejudgment interest,  
 2 directing each Defendant to pay a civil penalty of \$120,000, and directing the  
 3 Commission to lodge a proposed judgment including the amount of prejudgment interest.  
 4 Having considered the motions, evidence, declarations and exhibits, and other documents  
 5 filed in support of and in opposition to the motions, the Court enters judgment as follows:

6 **I.**

7 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendants  
 8 Hirsch, Berta Walder, Howard Walder, and Shah, and their agents, servants, employees,  
 9 attorneys, and all persons in active concert or participation with them who receive actual  
 10 notice of this Final Judgment by personal service or otherwise are permanently restrained  
 11 and enjoined from violating Section 5 of the Securities Act of 1933 (the “Securities Act”)  
 12 [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

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

**II.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Hirsch, Berta Walder, Howard Walder, and Shah, and their 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 Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

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

**III.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Hirsch, Berta Walder, Howard Walder, and Shah, and their 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, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material

fact necessary in order to make the statements made, in the light of the  
circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or  
would operate as a fraud or deceit upon any person.

#### IV.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that  
Defendants Hirsch, Berta Walder, Howard Walder, and Shah, and their 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, directly or indirectly, from making  
use of the mails or any means or instrumentality of interstate commerce to effect any  
transactions in, or to induce or attempt to induce the purchase or sale of, any security,  
without being registered as a broker or dealer pursuant to Section 15(b) of the Exchange  
Act [15 U.S.C. § 78o(b)] in violation of Section 15(a) of the Exchange Act [15 U.S.C.  
§ 78o(a)].

#### V.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that  
Defendant Hirsch is liable for disgorgement of \$1,245,220 representing profits gained as  
a result of the conduct alleged in the Complaint, together with prejudgment interest  
thereon in the amount of \$314,964.48 and a civil penalty in the amount of \$120,000  
pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)  
of the Exchange Act [15 U.S.C. § 78u(d)(3)], for a total of \$1,680,184.48. Defendant  
Hirsch shall satisfy this obligation by paying \$1,680,184.48 within 14 days after entry of  
this Final Judgment to the Clerk of this Court, together with a cover letter identifying  
Hirsch's name 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 Hirsch shall simultaneously transmit photocopies of such  
payment and letter to the Commission's counsel in this action. By making this payment,

Defendant Hirsch relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant Hirsch. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System (“CRIS”) or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the “Fund”), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court’s approval. Defendant Hirsch shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

## VI.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Berta Walder and Howard Walder are jointly and severally liable for disgorgement of \$1,245,217 representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$314,963.73, and must each pay a civil penalty in the amount of \$120,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], for a total of \$1,800,180.73. Defendants Berta Walder and Howard Walder shall satisfy this obligation by paying \$1,800,180.73 within 14 days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying Berta Walder’s and Howard Walder’s names as defendants 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. Defendants Berta Walder and Howard Walder shall simultaneously transmit photocopies of such payment and letter to the Commission’s counsel in this action. By making this payment,

Defendants Berta Walder and Howard Walder relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants Berta Walder or Howard Walder. The Clerk shall deposit the funds into an interest bearing account with the CRIS or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon, shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Defendants Berta Walder and Howard Walder shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

## VII.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Shah is liable for disgorgement of \$740,160 representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$187,215.20 and a civil penalty in the amount of \$120,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], for a total of \$1,047,375.20. Defendant Shah shall satisfy this obligation by paying \$1,047,375.20 within 14 days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying Shah's name 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 Shah shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant Shah relinquishes all legal and equitable right, title, and interest in such funds,

1 and no part of the funds shall be returned to Defendant Shah. The Clerk shall deposit the  
2 funds into an interest bearing account with the CRIS or any other type of interest bearing  
3 account that is utilized by the Court. These funds, together with any interest and income  
4 earned thereon, shall be held in the interest bearing account until further order of the  
5 Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the  
6 Administrative Office of the United States Courts, the Clerk is directed, without further  
7 order of this Court, to deduct from the income earned on the money in the Fund a fee  
8 equal to ten percent of the income earned on the Fund. Such fee shall not exceed that  
9 authorized by the Judicial Conference of the United States. The Commission may  
10 propose a plan to distribute the Fund subject to the Court's approval. Defendant Shah  
11 shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

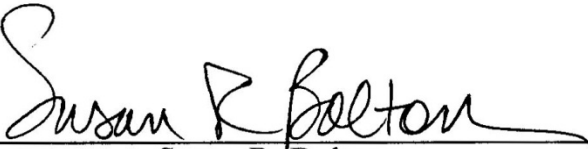
12 **VIII.**

13 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that  
14 this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of  
15 this Final Judgment.

16 **IX.**

17 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all other  
18 Orders of this Court shall remain in full force and effect.

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20 Dated this 27th day of April, 2011.

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24 Susan R. Bolton  
25 United States District Judge  
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