

1 MARC J. FAGEL (SBN. 154425)  
 fagelm@sec.gov  
 2 ROBERT L. MITCHELL (SBN. 161354)  
 mitchellr@sec.gov  
 3 SAHIL W. DESAI (SBN. 197358)  
 desais@sec.gov  
 4 44 Montgomery Street, Suite 2600  
 San Francisco, California 94104  
 Telephone: (415) 705-2500  
 5 Facsimile: (415) 705-2501  
 Attorneys for Plaintiff  
 6 SECURITIES AND EXCHANGE  
 COMMISSION  
 7

8  
 9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN JOSE DIVISION**

13  
 14 SECURITIES AND EXCHANGE COMMISSION,  
 Plaintiff,  
 15  
 vs.  
 16  
 17 BENJAMIN SILVA, III,  
 Defendant.  
 18

Case No. 09-05395-LHK

**[PROPOSED] FINAL JUDGMENT**

1 The Securities and Exchange Commission (“Commission”) having filed a complaint, and  
2 Defendant Benjamin Silva, III (“Defendant”) having been served with the complaint, entered a  
3 general appearance, consented to the Court’s jurisdiction over him and the subject matter of this  
4 action, consented to entry of this Final Judgment without admitting or denying the allegations of the  
5 complaint (except as to jurisdiction), waived findings of fact and conclusions of law, and waived any  
6 right to appeal from this Final Judgment:

7 **I.**

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently  
9 restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (“Securities Act”)  
10 [15 U.S.C. § 77q(a)] by, directly or indirectly, in the offer or sale of securities, by use of the means or  
11 instruments of transportation or communication in interstate commerce or by use of the mails:

- 12 (1) employing devices, schemes, or artifices to defraud;
- 13 (2) obtaining money or property by means of untrue statements of material fact or by  
14 omitting to state a material fact necessary in order to make the statements made, in  
15 light of the circumstances under which they were made, not misleading; or
- 16 (3) engaging in any transaction, practice, or course of business which operates or would  
17 operate as a fraud or deceit upon the purchaser.

18 **II.**

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently  
20 restrained and enjoined from violating or aiding and abetting the violation of Section 10(b) of the  
21 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §  
22 240.10b-5] by, directly or indirectly, in connection with the purchase or sale of securities, by the use  
23 of means or instrumentalities of interstate commerce, or of the mails:

- 24 (a) employing devices, schemes, or artifices to defraud; or
- 25 (b) making untrue statements of material facts or omitting to state material facts  
26 necessary in order to make the statements made, in the light of the  
27 circumstances under which they are made, not misleading.

**III.**

1  
2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently  
3 restrained and enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]  
4 and Rule 13b2-1 thereunder [17 C.F.R. 240.13b2-1] by knowingly circumventing or knowingly  
5 failing to implement a system of internal accounting controls of any issuer, which has a class of  
6 securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or any company  
7 which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o].

**IV.**

8  
9 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
10 permanently restrained and enjoined from violating Exchange Act Rule 13b2-2 [17 C.F.R. §  
11 240.13b2-2] by, directly or indirectly, (1) making or causing to be made a materially false or  
12 misleading statement; or (2) omitting to state, or causing another person to omit to state, material  
13 facts necessary in order to make statements made, in light of the circumstances under which such  
14 statements are made, not misleading, to an accountant in connection with: (i) an audit, review or  
15 examination of the financial statements of an issuer that the issuer is required to file with the  
16 Commission under the Exchange Act and the rules thereunder; or (ii) the preparation or filing of any  
17 document or report required to be filed by an issuer with the Commission under the Exchange Act  
18 and the rules thereunder.

**V.**

19  
20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently  
21 restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act  
22 [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder [17  
23 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13] by knowingly providing substantial  
24 assistance to an issuer, which has a class of securities registered pursuant to Section 12 of the  
25 Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o], in failing to  
26 file with the Commission such accurate and complete information, reports, and documents as are  
27 required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §  
28

1 78m(a)] and Rules 12b-20 [17 C.F.R. § 240.12b-20], 13a-1 [17 C.F.R. § 240.13a-1], 13a-11 [17  
2 C.F.R. § 240.13a-11], and 13a-13 [17 C.F.R. § 240.13a-13] promulgated thereunder.

3 **VI.**

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently  
5 restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of the  
6 Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by knowingly providing substantial assistance to any  
7 issuer, which has a class of securities registered pursuant to Section 12 of the Exchange Act [15  
8 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o], in failing to make or keep  
9 books, records or accounts, which, in reasonable detail, accurately and fairly reflect the transactions  
10 and dispositions of the assets of the issuer.

11 **VII.**

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently  
13 restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(B) of the  
14 Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by knowingly providing substantial assistance to any  
15 issuer, which has a class of securities registered pursuant to Section 12 of the Exchange Act [15  
16 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o], in failing to devise and  
17 maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- 18 A. transactions are executed in accordance with management's general or specific  
19 authorization;
- 20 B. transactions are recorded as necessary (i) to permit preparation of financial  
21 statements in conformity with generally accepted accounting principles or any  
22 other criteria applicable to such statements, and (ii) to maintain accountability  
23 for assets;
- 24 C. access to assets is permitted only in accordance with management's general or  
25 specific authorization; and
- 26 D. the recorded accountability for assets is compared with the existing assets at  
27 reasonable intervals and appropriate action is taken with respect to any  
28 differences.

**VIII.**

1  
2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section  
3 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15  
4 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer, which has  
5 a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or that is  
6 required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], for five  
7 (5) years following the date of entry of this Final Judgment.

**IX.**

8  
9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay  
10 \$75,720.97 plus prejudgment interest thereon of \$20,600.55, for a total of \$96,321.52. Defendant  
11 shall satisfy this obligation by paying \$96,321.52 within fourteen (14) days after entry of this Final  
12 Judgment by certified check, bank cashier's check, or United States postal money order payable to the  
13 Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of  
14 Financial Management, Securities and Exchange Commission, Operations Center, 6432 General  
15 Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter that  
16 identifies Benjamin Silva, III as a defendant in this action, sets forth the title and civil action number  
17 of this action and the name of this Court, and specifies that payment is made pursuant to this Final  
18 Judgment. Defendant shall concurrently transmit a photocopy of such payment and letter to the  
19 attention of Marc J. Fagel, Regional Director, at the Commission's San Francisco Regional Office, 44  
20 Montgomery Street, Suite 2600, San Francisco, California 94104. Defendant shall pay post-  
21 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall  
22 remit the funds paid pursuant to this paragraph to the United States Treasury.

**X.**

23  
24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay  
25 \$40,000.00 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)  
26 of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall make this payment pursuant to the  
27 terms of the payment schedule set forth in paragraph XI, below. All payments shall be made by  
28 certified check, bank cashier's check, or United States postal money order payable to the Securities

1 and Exchange Commission. Each payment shall be delivered or mailed to the Office of Financial  
2 Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way,  
3 Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter that identifies  
4 Benjamin Silva, III as a defendant in this action, sets forth the title and civil action number of this  
5 action and the name of this Court, and specifies that payment is made pursuant to this Final  
6 Judgment. Defendant shall concurrently transmit a photocopy of each such payment and letter to the  
7 attention of Marc J. Fagel, Regional Director, at the Commission's San Francisco Regional Office, 44  
8 Montgomery Street, Suite 2600, San Francisco, California 94104. Defendant shall pay post-  
9 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall  
10 remit the funds paid pursuant to this paragraph to the United States Treasury.

11 **XI.**

12 Defendant shall pay the \$40,000.00 set forth in paragraph X, above, in installments according  
13 to the following schedule: (1) \$10,000.00 within fourteen (14) days of entry of this Final Judgment;  
14 (2) an additional \$7,500.00 within ninety (90) days of entry of this Final Judgment; (3) an additional  
15 \$7,500.00 within 180 days of entry of this Final Judgment; (4) an additional \$7,500.00 within 270  
16 days of the entry of this Final Judgment; and (5) the remaining \$7,500.00 within 365 days of the  
17 entry of this Final Judgment. If Defendant fails to make any payment by the date agreed and/or in the  
18 amount agreed according to the schedule set forth above, all outstanding payments under this Final  
19 Judgment, including post-judgment interest, minus any payments made, shall become due and  
20 payable immediately without further application to the Court.

21 **XII.**

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant  
23 Benjamin Silva, III To Entry Of Final Judgment (the "Consent") is incorporated herein with the same  
24 force and effect as if fully set forth herein, and that Defendant shall comply with all of the  
25 undertakings and agreements set forth therein.

XIII.

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.

XIV.

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: May 31, 2011

*Lucy H. Koh*  
UNITED STATES DISTRICT JUDGE

Approved as to form:

*[Signature]*

BOIES, SCHILLER & FLEXNER LLP  
David W. Shapiro (SBN 219265)  
dshapiro@bsflfp.com  
David L. Zifkin (SBN 232845)  
dzifkin@bsflfp.com  
1999 Harrison Street, Suite 900  
Oakland, CA 94612  
Telephone: 510-874-1000  
Facsimile: 510-874-1460

DAVID T. ALEXANDER (SBN. 49996)  
LAW OFFICE OF DAVID T. ALEXANDER  
332 Sheridan Avenue  
Piedmont, CA 94611  
Telephone (650) 387-4382  
david@dta-law.com

Attorneys for Defendant Benjamin Silva, III

Submitted By:

*[Signature]*

Robert L. Mitchell  
Sahil W. Desai

Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION