

N

1 MARC J. FAGEL (Cal. Bar No. 154425)  
JOHN S. YUN ([yunj@sec.gov](mailto:yunj@sec.gov)) (Cal. Bar No. 112260)  
2 SHEILA E. O'CALLAGHAN ([ocallaghans@sec.gov](mailto:ocallaghans@sec.gov)) (Cal. Bar No. 131032)  
ELENA RO ([roe@sec.gov](mailto:roe@sec.gov)) (Cal. Bar No. 197308)

3 Attorneys for Plaintiff  
4 SECURITIES AND EXCHANGE COMMISSION  
44 Montgomery Street, Suite 2600  
5 San Francisco, California 94104  
Telephone: (415) 705-2500  
6 Facsimile: (415) 705-2501

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

11  
12 SECURITIES AND EXCHANGE COMMISSION, Case No. C-06-6003-CW

13 Plaintiff,

14 v.

15 CORT L. POYNER,

16 Defendant.

REVISÉD FINAL JUDGMENT AS TO  
DEFENDANT CORT L. POYNER

17  
18  
19 **REVISÉD FINAL JUDGMENT AS TO DEFENDANT CORT L. POYNER**

20 The jury having entered its verdict on April 3, 2008 of liability against Defendant Cort L.  
21 Poyner ("Poyner") for violating Section 5 of the Securities Act of 1933 ("Securities Act"), Section  
22 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 10(b) and Rule 10b-5  
23 thereunder of the Exchange Act and Section 17(a)(1) of the Securities Act, and this Court having  
24 entered on October 3, 2008 its Order Determining Remedies for Defendants' Violations of the  
25 Securities Laws:

26 ///

27 ///

N

I.

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

15 II.

16 IT IS HEREBY 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)(1) of the Securities Act [15 U.S.C.  
20 § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation  
21 or communication in interstate commerce or by use of the mails, directly or indirectly, to employ any  
22 device, scheme, or artifice to defraud.

23 III.

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

N

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

15 IV.

16 IT IS HEREBY 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 15(a)(1) of the Exchange Act [15 U.S.C.  
20 § 78o(a)] by, through use of the mails or means or instrumentalities of interstate commerce, effecting  
21 transactions in, or inducing or attempting to induce the purchase or sale of, securities (other than an  
22 exempted security or commercial paper, bankers' acceptances, or commercial bills) as a broker or  
23 dealer without being registered with the Commission in accordance with Section 15(b) of the  
24 Exchange Act [15 U.S.C. § 78o(b)].

25 V.

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
27 permanently barred from participating in an offering of penny stock, including by engaging in  
28 activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to

N

1 induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price  
2 of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R.  
3 240.3a51-1].

## VI.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
6 liable for disgorgement of \$413,767 representing profits gained as a result of the conduct alleged in  
7 the Complaint, together with prejudgment interest thereon in the amount of \$61,118, and a civil  
8 penalty in the amount of \$120,000 pursuant to 15 U.S.C. § 78u(d)(3)(A), for a total of \$594,885.  
9 Defendant shall satisfy this obligation by paying \$594,885 within ten (10) business days after entry  
10 of this Final Judgment by certified check, bank cashier's check, or United States postal money order  
11 payable to the Clerk of this Court, together with a cover letter identifying Cort L. Poyner as a  
12 defendant in this action; setting forth the title and civil action number of this action and the name of  
13 this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall  
14 simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this  
15 action. Defendant shall also pay post-judgment interest on any delinquent amounts pursuant to 28  
16 U.S.C. § 1961.

17 The Clerk shall deposit the funds into an interest bearing account with the Court Registry  
18 Investment System ("CRIS") or any other type of interest bearing account that is utilized by the  
19 Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"),  
20 shall be held in the interest bearing account until further order of the Court. In accordance with 28  
21 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States  
22 Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on  
23 the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall  
24 not exceed that authorized by the Judicial Conference of the United States.

25 The Commission may by motion propose a plan to distribute the Fund subject to the Court's  
26 approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund  
27 provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such  
28 Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this

N

1 Judgment shall be treated as penalties paid to the government for all purposes, including all tax  
2 purposes.

3 VII.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain  
5 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

6 VIII.

7 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil  
8 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

9  
10 Dated: November 3, 2008



11  
12 CLAUDIA WILKEN  
13 UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28