

ORIGINAL

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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

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OCT - 9 2002

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

12 SECURITIES AND EXCHANGE COMMISSION,
13 Plaintiff,
14 vs.
15 FRED ALBERT SCHLUEP,
16 Defendant, and
17 HOWARD G. SYLVESTER,
18 Relief Defendant.

Case No. C-02-4193-CRB

JUDGMENT OF
PERMANENT INJUNCTION AND OTHER
LEGAL AND EQUITABLE RELIEF
AGAINST FRED ALBERT SCHLUEP

19 Plaintiff Securities and Exchange Commission (the "Commission") has filed against
20 defendant Fred Albert Schluep ("Schluep") a Summons and Complaint ("Complaint") in this
21 action. Schluep is represented by counsel, has waived service upon himself of the Summons and
22 the Complaint, and has admitted the jurisdiction of this Court over himself and over the subject
23 matter of this action. Schluep, having been fully advised and informed of its right to a judicial
24 determination of this matter, has waived findings of fact and conclusions of law as provided by
25 Rule 52 of the Federal Rules of Civil Procedure, and has consented to the entry of this Judgment
26 of Permanent Injunction and Other Legal and Equitable Relief Against Fred Albert Schluep
27 ("Judgment"), without admitting or denying any of the allegations in the Complaint, except as
28 specifically set forth in the Consent of Fred Albert Schluep to Entry of Judgment of Permanent
Injunction and Other Legal and Equitable Relief ("Consent"). The Court finds that no notice of

1 hearing upon the entry of this Judgment is necessary. The Court, being fully advised in the
2 premises, orders as follows:

3 I.

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Schluep and his agents,
5 servants, employees, attorneys, and all persons in active concert or participation with any of them,
6 who receive actual notice of this Judgment by personal service or otherwise, and each of them, are
7 permanently restrained and enjoined from, directly or indirectly, in connection with the purchase
8 or sale of any security, by the use of any means or instrumentality of interstate commerce, or of
9 the mails, or of any facility of any national securities exchange:

- 10 (1) employing any device, scheme, or artifice to defraud;
- 11 (2) making any untrue statement of a material fact or omitting to state a material fact
12 necessary in order to make the statements made, in the light of the circumstances
13 under which they were made, not misleading; or
- 14 (3) engaging in any act, practice, or course of business which operates or would operate
15 as a fraud or deceit upon any person;

16 in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C.
17 § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

18 II.

19
20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Schluep and his
21 agents, servants, employees, attorneys, and all persons in active concert or participation with
22 any of them, who receive actual notice of this Judgment by personal service or otherwise, and
23 each of them, are permanently restrained and enjoined from, directly or indirectly, by the use of
24 the mails or any means or instrumentality of interstate commerce:

- 25 (a) employ any device, scheme, or artifice to defraud any client or prospective client;

26 or
27

1 (b) engage in any transaction, practice, or course of business which operates as a fraud
2 or deceit upon any client or prospective client.

3
4 in violation of Section 206 of the Investment Advisers Act of 1940 (the "Advisers Act") [15
5 U.S.C. § 80b-6].

6
7 **III.**

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Schleup shall disgorge all
9 gains or losses avoided from the violations of the federal securities laws alleged in the complaint,
10 together with pre-judgment interest calculated pursuant to 28 U.S.C. § 1961. The total amount of
11 disgorgement and pre-judgment interest shall be determined by the Court on motion or at trial in
12 accordance with the Federal Rules of Civil Procedure. Pre-judgment interest shall be calculated from
13 the date of each receipt of funds by Schleup to the date of the order or judgment fixing the amount of
14 disgorgement. Defendant Schleup shall not raise as a defense that he is not liable for the payment of
15 such disgorgement because there was no violation of the federal securities laws as alleged in the
16 complaint. Defendant Schleup may only offer proof as to the actual amount of investor funds that he
17 received.

18 **IV.**

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Schleup shall pay a civil
20 money penalty pursuant to Section 21(d)(3) of the Exchange Act and Section 209(e) of the Advisers
21 Act in an amount to be determined by the Court on motion or at trial in accordance with the Federal
22 Rules of Civil Procedure.


23 **V.**

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions of the
25 Consent filed concurrently with this Judgment are incorporated by this reference, and that Schlupep
26 shall comply with the Consent.
27


VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for the purposes of implementing and carrying out the terms of all orders and decrees which may be entered herein, including, but not limited to, the imposition of a order of disgorgement and civil penalties to the extent appropriate, and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, including to determine the liability of any remaining defendants in this action, to implement, and to grant such other relief as this Court may deem necessary and just.

Dated: October 9, 2002

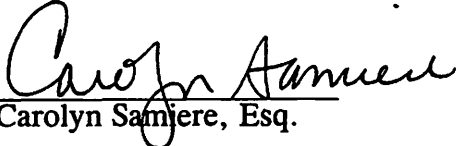

United States District Judge

APPROVED AS TO FORM:


E. Arthur Pirelli, Esq.
LAW OFFICES OF E. ARTHUR PIRELLI
Attorneys for Defendant Fred Albert Schlupe

Dated: 9-16-02

SUBMITTED BY:


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Telephone: (415) 705-2500

Dated: 9-16-02