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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SECURITIES AND EXCHANGE COMMISSION,
 Plaintiff,
 v.
 SECURITY TRUST COMPANY, N.A., et al.,
 Defendants.

Case No. CV 03 2323 PHX JWS
~~PROPOSED~~ FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST NICOLE McDERMOTT

Plaintiff Securities and Exchange Commission ("Commission"), having filed and served upon Defendant Nicole McDermott ("McDermott") a Summons and Complaint in this action; McDermott having admitted service upon her of the Summons and Complaint in this action and the jurisdiction of this Court over her and over the subject matter of this action; having been fully advised and informed of her right to a judicial determination of this matter; having waived the entry of findings of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure; having consented to the entry of this Final Judgment Of Permanent Injunction And Other Relief Against Nicole McDermott ("Judgment") without admitting or denying the

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1 allegations in the Complaint, except as specifically set forth in the
2 Consent Of Defendant Nicole McDermott To Entry Of Final Judgment Of
3 Permanent Injunction And Other Relief (“Consent”); no notice of hearing
4 upon the entry of this Judgment being necessary; and this Court being
5 fully advised:

6 **I.**

7 IT IS ORDERED, ADJUDGED AND DECREED that McDermott
8 and her agents, servants, employees and attorneys, and all persons in
9 active concert or participation with any of them, who receive actual
10 notice of this Judgment by personal service or otherwise, and each of
11 them, are permanently restrained and enjoined from, directly or indirectly,
12 in the offer or sale of any securities, by the use of any means or
13 instruments of transportation or communication in interstate commerce or
14 by the use of the mails:

- 15 A. employing any device, scheme, or artifice to defraud;
16 B. obtaining money or property by means of any untrue
17 statement of a material fact or omitting to state a material
18 fact necessary in order to make the statements made, in light
19 of the circumstances under which they were made, not
20 misleading; or
21 C. engaging in any transaction, practice, or course of business
22 which operates or would operate as a fraud or deceit upon
23 the purchaser;

24 in violation of Section 17(a) of the Securities Act of 1933 (“Securities
25 Act”), 15 U.S.C. § 77q(a).

26 **II.**

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
28 McDermott and her agents, servants, employees and attorneys, and those

1 persons in active concert or participation with them who receive actual
2 notice of this Judgment by personal service or otherwise, are permanently
3 restrained and enjoined from, directly or indirectly, in connection with
4 the purchase or sale of any security, by the use of any means or
5 instrumentality of interstate commerce, or of the mails, or of any facility
6 of any national securities exchange:

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

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

18 **III.**

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
20 the Court retains jurisdiction to determine the appropriateness and
21 amounts of disgorgement, prejudgment interest and a civil penalty.
22 Prejudgment interest shall be calculated pursuant to 28 U.S.C. § 1961 to
23 the date the judgment fixing the amount of disgorgement is entered.
24 McDermott shall not raise as a defense that she is not liable for the
25 payment of such disgorgement or for a civil penalty, if any, because she
26 did not violate one or more of the provisions of the Securities Act,
27 Exchange Act or Exchange Act Rule set forth in this Judgment. Solely
28 for the purposes of determining the appropriateness and amounts of

1 disgorgement and a civil penalty, the facts alleged in the Commission's
2 Complaint are accepted as and deemed true by the Court.

3 **IV.**

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
5 the provisions of the Consent filed concurrently with this Judgment are
6 incorporated herein with the same force and effect as if fully set forth
7 herein and that McDermott shall comply with her Consent.

8 **V.**

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
10 during the pendency of this action, McDermott shall remain subject to the
11 discovery provisions of the Federal Rules of Civil Procedure which apply
12 to parties, and, in addition, that McDermott agrees and undertakes,
13 without service of a subpoena, to appear for her deposition or to testify as
14 a witness at any trial of this action or at any related proceeding, provided
15 that the party requesting the testimony reimburses McDermott's travel,
16 lodging, and subsistence expenses at the then-prevailing U.S.
17 Government per diem rates. Failure to comply will subject McDermott to
18 the remedies and sanctions set forth in Rule 37 of the Federal Rules of
19 Civil Procedure and all other available remedies.

20 **VI.**

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
22 in connection with this action and any related judicial or administrative
23 proceeding or investigation commenced by the Commission or to which
24 the Commission is a party, McDermott (i) shall appear and be interviewed
25 by Commission staff at such times and places as the staff requests upon
26 reasonable notice, provided that the party requesting the interview
27 reimburses McDermott's travel, lodging, and subsistence expenses at the
28 then-prevailing U.S. Government per diem rates; and (ii) shall accept

1 service by mail or facsimile transmission of notices or subpoenas for
2 documents or testimony at depositions, hearings, or trials, or in
3 connection with any related investigation by Commission staff.

4 **VII.**

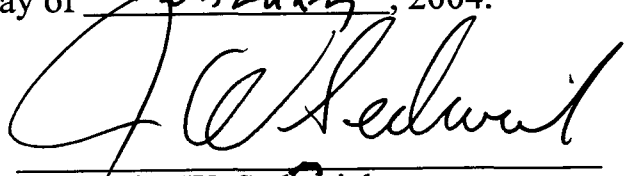
5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
6 this Court shall retain jurisdiction over this action for all purposes,
7 including implementing and carrying out the terms of this Judgment and
8 all other orders which may be entered herein, to resolve the
9 Commission's pending claims against McDermott for disgorgement
10 together with prejudgment interest and for civil penalties, and to entertain
11 any suitable application or motion for additional relief within the
12 jurisdiction of this Court.

13 **VIII.**

14 There being no just reason for delay, the Clerk of the Court is
15 hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil
16 Procedure, to enter this Judgment.

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18 IT IS SO ORDERED.

19 DATED this 15th day of February, 2004.

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22 Hon. John W. Sedgwick
23 UNITED STATES DISTRICT JUDGE
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