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FILED
CLERK, U.S. DISTRICT COURT
ENTERED
CLERK, U.S. DISTRICT COURT MAY 15 2001
MAY 15 2001
CENTRAL DISTRICT OF CALIFORNIA
BY
CENTRAL DISTRICT OF CALIFORNIA
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CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

vs.

DAVID J. NAUGHTON, STEPHEN R.
KEENUM, MARK R. AVILA, STEPHEN R.
RAWLINGS, RICHARD C. REINING, ADAM
E. PECK, VICTOR R. GRAUUG, RAFFI
T. KING, CHARLES F. HAGEMANN,
RONALD L. GAISER, JOSEPH L. HILL
AND MICHAEL R. TOMPKINS,
Defendants.

Case No. CV-00-7531 R (Ex)

~~[REVISED PROPOSED]~~ ORDER
GRANTING MOTION BY
PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION FOR
ENTRY OF DEFAULT JUDGMENT
AGAINST DEFENDANT VICTOR
GRAUUG PURSUANT TO FED.
R. CIV. P. 37(d); FINAL
JUDGMENT OF PERMANENT
INJUNCTION AND OTHER
RELIEF AGAINST DEFENDANT
VICTOR GRAUUG

The Court has considered the Motion By Plaintiff Securities
And Exchange Commission For Entry Of Default Judgment Against
Defendant Victor Graaug Pursuant To Fed. R. Civ. P. 37(d) and
the supporting papers showing that Graaug failed to respond to
any of the Commission's discovery requests, appear for his
noticed deposition, or comply with Local Rules 6 and 9.4. Based
upon all of the memoranda, evidence and argument presented to the
Court regarding the Commission's motion, the Court finds as
follows:

1. On September 29, 2000, the Court issued its Notice to

✓ Docketed
✓ Copies / NTC Sent
JS-5 JS-6
JS-2 JS-3

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).
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1 Counsel stating in relevant part that:

2 [T]he Court expects strict compliance with the
3 provisions of the Local Rules and the Federal Rules of
4 Civil Procedure. NONCOMPLIANCE MAY LEAD TO THE
5 IMPOSITION OF SANCTIONS WHICH MAY INCLUDE THE STRIKING
6 OF PLEADINGS AND ENTRY OF JUDGMENT OR DISMISSAL OF THE
7 ACTION.

8 [emphasis in original]. On November 9, 2000, Plaintiff
9 Securities and Exchange Commission ("Commission") served Grauaug
10 with the Notice to Counsel as ordered by the Court.

11 2. On December 11, 2000, the Court issued its Notice of
12 Pre-trial Conference which stated in relevant part that:

13 STRICT COMPLIANCE IS REQUIRED BY THE COURT WITH THE
14 REQUIREMENTS OF LOCAL RULE 9 AND ALL DOCUMENTS REQUIRED
15 THEREIN AND THE FEDERAL RULES OF CIVIL PROCEDURE.
16 FAILURE TO COMPLY WITH THESE RULES MAY LEAD TO
17 DISMISSAL OF THE ACTION.

18 [emphasis in original].

19 3. On January 12, 2001, the Commission served Victor
20 Grauaug by mail with Plaintiff Securities And Exchange
21 Commission's First Set Of Interrogatories To Defendants Victor R.
22 Grauaug And Ronald L. Gaiser Pursuant To Fed. R. Civ. P. 33
23 ("Interrogatories") and with Plaintiff Securities And Exchange
24 Commission's First Request For Production Of Documents To
25 Defendants Victor R. Grauaug And Ronald L. Gaiser Pursuant To
26 Rule 34(a)(1) Fed.R.Civ.P. ("Document Requests"). Pursuant to
27 Fed. R. Civ. P. 33(b)(3), 34(b) and 6(e), Grauaug's responses to
28 the Interrogatories and Document Requests were required to be

1 served on the Commission by February 14, 2001. The Commission
2 received no responses to either the Interrogatories or Document
3 Requests, notwithstanding its February 13, 2001, letter reminding
4 Graaug of the due date of his responses and warning him that the
5 Commission would seek entry of a default judgment against him if
6 he failed to respond to these discovery requests.

7 4. On January 30, 2001, the Commission served Graaug by
8 mail with Plaintiff Securities And Exchange Commission's First
9 Notice Of Depositions, noticing Graaug's deposition for February
10 21, 2001. The Commission's February 13, 2001, letter reminded
11 Graaug that his deposition had been noticed for February 21, and
12 that the mandatory Local Rule 9.4 meeting was also scheduled for
13 that day.

14 5. On February 20, 2001, Graaug telephoned the Commission
15 and requested an extension of time for his deposition, giving
16 only the inadequate excuse that he was "not prepared."
17 Commission counsel declined to stipulate to an extension because
18 of the imminent March 12, 2001, discovery cut-off.

19 6. On February 21, 2001, Graaug left a voice mail message
20 with Commission counsel claiming that he had a fever and that he
21 would therefore not be attending his deposition that day.
22 Graaug failed to appear for his deposition.

23 7. On February 21, following Graaug's failure to appear,
24 the Commission served Graaug with Plaintiff Securities And
25 Exchange Commission's Second notice Of Deposition, noticing his
26 deposition for March 1, 2001. The Commission also sent Graaug a
27 letter pursuant to Local Rule 7.15.1 requesting an in-person
28 meeting in order to attempt to resolve the discovery disputes

1 arising from Grauaug's failures to respond to the Commission's
2 Interrogatories and Document Requests and to appear at his
3 deposition. The Commission requested that the Local Rule 7.15
4 meeting take place immediately following Grauaug's deposition on
5 March 1, 2001.

6 8. Grauaug failed to appear on March 1, 2001, for either
7 his deposition or the Local Rule 7.15 meeting.

8 9. Grauaug's failures to respond to the Interrogatories or
9 Document Requests, to appear for his deposition despite being
10 given two opportunities to do so, or to appear for the mandatory
11 Local Rule 6 and Local Rule 9 meetings, constitute wilful
12 misconduct in that Grauaug's conduct has not been shown to be
13 outside his control. Grauaug's failures to comply with the
14 discovery rules, as well as Local Rule 6 and Local Rule 9.4, also
15 constitute bad faith and are solely his fault. In particular,
16 Grauaug utterly failed to heed the warnings by the Court in its
17 Notice to Counsel and Notice of Pre-trial Conference that strict
18 adherence to the Federal and Local Rules is required by the
19 Court, and that failure to comply with those rules could
20 constitute grounds for entry of a default judgment.

21 10. The Commission has been prejudiced by Grauaug's
22 complete failure to respond to its discovery requests, to appear
23 at his deposition, or to attend the mandatory Local Rule 6 and
24 Local Rule 9.4 meetings. Because of Grauaug's wilful failure to
25 comply with the Federal Rules of Civil Procedure and Local Rules,
26 the Commission did not received any witness list or documents
27 from Grauaug prior to the discovery cut-off, thus impairing the

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1 Commission's ability to go to trial against Grauaug, and
2 interfering with the rightful decision of the case.

3 Accordingly:

4 **I.**

5 IT IS HEREBY ORDERED that the Commission's Motion against
6 Defendant Grauaug for entry of a default judgment against him
7 pursuant to Fed. R. Civ. P. 37(d) is GRANTED.

8 **II.**

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant
10 Grauaug and his agents, servants, employees and attorneys, and
11 all persons in active concert or participation with any of them
12 who receive actual notice of this Final Judgment by personal
13 service or otherwise, and each of them, are permanently
14 restrained and enjoined from, directly or indirectly:

15 A. making use of any means or instruments of
16 transportation or communication in interstate commerce
17 or of the mails to sell any securities, through the use
18 or medium of any prospectus or otherwise, unless a
19 registration statement is in effect as to such
20 securities;

21 B. carrying or causing to be carried through the mails or
22 in interstate commerce, by any means or instruments of
23 transportation, for the purpose of sale or for delivery
24 after sale, any securities, unless a registration
25 statement is in effect as to such securities; or

26 C. making use of any means or instruments of
27 transportation or communication in interstate commerce
28 or of the mails to offer to sell or offer to buy,

1 through the use or medium of any prospectus or
2 otherwise, any securities, unless a registration
3 statement has been filed with the Commission as to such
4 securities, or while the registration statement is the
5 subject of a refusal order or stop order or (prior to
6 the effective date of the registration statement) any
7 public proceeding of examination under Section 8 of the
8 Securities Act [15 U.S.C. § 77h];
9 in violation of Sections 5(a) and 5(c) of the Securities Act of
10 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) & 77e(c)].

11 **III.**

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant
13 Graaug and his agents, servants, employees and attorneys, and
14 all persons in active concert or participation with any of them
15 who receive actual notice of this Final Judgment by personal
16 service or otherwise, and each of them, are permanently
17 restrained and enjoined from, directly or indirectly, in the
18 offer or sale of any securities, by the use of any means or
19 instruments of transportation or communication in interstate
20 commerce or by the use of the mails:

- 21 A. employing any device, scheme or artifice to defraud;
22 B. obtaining money or property by means of any untrue
23 statement of a material fact or any omission to state a
24 material fact necessary in order to make the statements
25 made, in the light of the circumstances under which
26 they were made, not misleading; or

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1 C. engaging in any transaction, practice, or course of
2 business which operates or would operate as a fraud or
3 deceit upon the purchaser;
4 in violation of Section 17(a) of the Securities Act [15 U.S.C. §
5 77q(a)].

6 IV.

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

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

25 in violation of Section 10(b) of the Securities Exchange Act of
26 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5
27 thereunder [17 C.F.R. § 240.10b-5].

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V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Grauaug and his agents, servants, employees and attorneys, and all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined 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)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Grauaug shall pay disgorgement in the amount of \$211,306 representing his ill-gotten gains from the conduct alleged in the Complaint. Defendant Grauaug shall pay the disgorgement by cashier's check, certified check or postal money order made payable to the Securities and Exchange Commission and transmitted to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia, 22312, under cover of a letter that identifies the defendant, the name and case number of this litigation, and the court. A copy of the cover letter and the check or money order shall be simultaneously transmitted to counsel for the Commission at its Los Angeles office, located at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

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VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Grauaug shall pay a civil penalty 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), in the amount of \$110,000. Defendant Grauaug shall pay the civil penalty by cashier's check, certified check or postal money order made payable to the United States Treasury, and transmitted to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia, 22312, under cover of a letter that identifies the defendant, the name and case number of this litigation, and the court. A copy of the cover letter and the check or money order shall be simultaneously transmitted to counsel for the Commission at its Los Angeles office, located at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for all purposes, including to determine the liability of any remaining defendants in this action, to implement and enforce the terms of this Final Judgment and other orders and decrees which may be entered, and to grant such other relief as this Court may deem necessary and just.

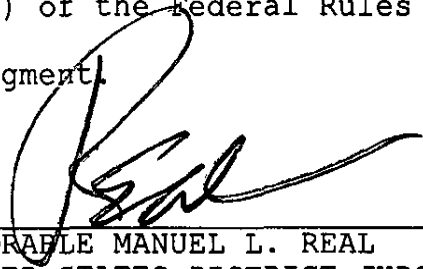
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There being no just reason for delay, the Clerk of the Court is directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment.

DATED: *May 15, 2001*



HONORABLE MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I, Magnolia M. Marcelo, am over the age of 18 years, not a party to this action, and am a citizen of the United States. My business address is 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036. On May 14, 2001, at the direction of a member of the bar of this Court, I served the **[REVISED PROPOSED] ORDER GRANTING MOTION BY PLAINTIFF SECURITIES AND EXCHANGE COMMISSION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANT VICTOR GRAUAUG PURSUANT TO FED. R. CIV. P. 37(d); FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST DEFENDANT VICTOR GRAUAUG** by causing to be mailed true and correct copies thereof in sealed envelopes, postage prepaid, to:

Donald S. Burris, Esq.
Burris & Hairrell, LLP
12121 Wilshire Boulevard, Suite 800
Los Angeles, CA 90025-1171
Counsel for Defendant Charles F. Hagemann

Victor R. Graaug
2580 NorthShore Road
Westlake Village, CA 91361

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 14, 2001

Magnolia M. Marcelo
Magnolia M. Marcelo