

APR 23 2003

U.S. District Court
Northern District of California
San Jose

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RICHARD A. FLEMING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA, S.J.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,	:	Civ. Action No.
Plaintiff,	:	C-00-20655 (JW)
	:	
- v. -	:	
	:	
MICHAEL R. HENDRIX, DOUGLAS S. SAWAMURA,	:	FINAL JUDGMENT
JEFFREY S. SUMMERLIN, JAMES A.S. LEWIS,	:	AS TO
CRAIG A. LARREW, SAN H. MAI, BICH THI	:	MICHAEL R. HENDRIX
HOANG, LINH NGOC VU, NICK S. PARK,	:	
JOHN H. OH, TIMOTHY J. HELMS and	:	
RAYMOND L. HELMS,	:	
Defendants.	:	

Defendant Hendrix has entered a general appearance herein;
admitted the jurisdiction of this Court over him and over the
subject matter of this action; withdrawn his answer to the
Complaint; waived the entry of findings of fact and conclusions of
law pursuant to Rule 52 of the Federal Rules of Civil Procedure;

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1 and without admitting or denying the allegations of the Complaint,
2 except as to jurisdiction, which he admits, consented to the entry
3 of this Final Judgment. It further appearing that this Court has
4 jurisdiction over Hendrix and the subject matter hereof, **it is**
5 **hereby ordered, adjudged and decreed** pursuant to Rule 54(b) of the
6 Federal Rules of Civil Procedure as follows:

7 I.

8 Hendrix, his agents, servants, employees, attorneys-in-fact,
9 successors, and assigns, and those persons in active concert or
10 participation with them who receive actual notice of this Final
11 Judgment by personal service or otherwise, and each of them, be
12 and hereby are permanently restrained and enjoined from violating
13 Section 10(b) of the Securities Exchange Act of 1934 ("Exchange
14 Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder
15 [17 C.F.R. § 240.10b-5] by, directly or indirectly, using any
16 means or instrumentality of interstate commerce, or of the mails,
17 or of any facility of any national securities exchange:

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

27 in connection with the purchase or sale of any security.

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II.

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2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Hendrix
3 shall pay disgorgement in the amount of \$104,885.63, plus
4 prejudgment interest thereon in the amount of \$56,203.46 and
5 civil money penalties in the amount of \$561,011.05 pursuant to
6 Section 21A of the Exchange Act [15 U.S.C. § 78u-1].
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III.

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9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that monies paid
10 pursuant to paragraph II above, of this Final Judgment, shall
11 include post-judgment interest pursuant to 28 U.S.C. § 1961, and
12 shall be paid as follows: First, within 10 days of the entry of
13 this Final Judgment, Hendrix shall pay \$30,000; then, beginning
14 within six months of, and continuing every six months thereafter
15 until five years following, the entry of this Final Judgment,
16 Hendrix shall make a total of ten semi-annual payments of
17 \$71,467.32 each. The \$30,000 payment and the ten semi-annual
18 payments of \$71,467.32 shall each be made in the following
19 manner:
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- 22 (a) such monies shall be paid into this Court's registry by
23 certified check or money order drawn to the order of
24 "Clerk, United States District Court, Northern District
25 of California," and delivered to the Registry of the
26 Court, U.S. District Court for the Northern District of
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1 California, 450 Golden Gate Avenue, Box 36060, San
2 Francisco, California, 94102, whereupon the Clerk of this
3 Court, or the Financial Deputy Clerk, is hereby directed
4 to deposit each said certified check or money order into
5 an interest bearing account (the "Account") with the
6 Court Registry Investment System ("CRIS");

7 (b) Simultaneously with each payment, Hendrix shall send
8 copies of any certified checks or money orders to Samuel
9 J. Draddy, Senior Counsel, Division of Enforcement,
10 United States Securities and Exchange Commission, 450
11 Fifth Street, Washington, D.C. 20549-0806, under cover of
12 a letter identifying Hendrix as a defendant in this
13 action, the case number of the action, the name of the
14 Court, and the Commission's file number (HO-3141);

15 (c) The Account shall be held by the CRIS until further
16 order of the Court, and distributed pursuant to a Court-
17 approved plan to be proposed by motion of the Commission,
18 but in no event shall the monies paid revert, directly or
19 indirectly, to Hendrix, or to his heirs or assigns. Such
20 a plan may provide that monies in the Account shall be
21 distributed pursuant to the Fair Fund provisions of
22 Section 308(a) of the Sarbanes-Oxley Act of 2002;

23 (d) Interest earned on the Account shall be credited to the
24 Account and shall thereafter be treated in the same
25 manner as principal; and
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1 The Clerk of the Court is directed to deduct from the income
2 earned on the investment a fee, not exceeding that authorized by
3 the Judicial Conference of the United States and set by the
4 Director of the Administrative Office at or equal to 10% of the
5 income earned in the investment so held and without further order
6 of the Court.

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8 IV.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, if any
10 payment required by paragraph III above is not received within
11 fifteen days after the date on which such payment is due,
12 Hendrix's entire outstanding balance of disgorgement, prejudgment
13 interest and civil penalties shall immediately become due and
14 payable and the Commission may, at its sole discretion and
15 without further notice to Hendrix, petition the Court for an
16 order requiring the immediate payment of such outstanding balance
17 by Hendrix. In connection with any such petition, the only issue
18 shall be whether Hendrix's payment was made within fifteen days
19 after it was due, and Hendrix may not, by way of defense to such
20 petition, challenge the validity of the Consent or this Final
21 Judgment. In any such petition, the Commission may move this
22 Court to consider all available remedies, including, but not
23 limited to, ordering Hendrix to pay funds or assets, directing
24 the forfeiture of any assets, or imposing sanctions for contempt
25 of this Court's Final Judgment, and the Commission may also
26 request additional discovery.
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V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court's determination to allow Hendrix to pay his disgorgement, prejudgment interest and civil penalties in installments over a five-year period, as described above, is based upon the sworn representations in Hendrix's Statement of Financial Condition dated March 13, 2002, and submitted to the Commission. Thus, this determination is conditioned upon the accuracy and completeness of Hendrix's sworn representations to the Commission concerning his assets, income, liabilities and net worth, as described in his sworn Statement of Financial Condition dated March 13, 2002, and submitted to the Commission. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Hendrix's representations to the Commission concerning his assets, income, liabilities and net worth, were fraudulent, misleading, inaccurate, or incomplete in any material respect, as of the time such representations were made, the Commission may, at its sole discretion, petition the Court for an order imposing immediate payment of the disgorgement, interest and penalties in referenced in paragraph II above. In connection with any such petition, the only issues shall be whether the financial information provided by Hendrix was fraudulent, misleading, inaccurate, or incomplete in any material respect, as of the time such representations were made. In any such petition, the

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1 Commission may move the Court to consider all available remedies,
2 including, but not limited to, ordering defendant Hendrix to pay
3 funds or assets, directing the forfeiture of any assets, or
4 sanctions for contempt of the Court's Final Judgment, and the
5 Commission may also request additional discovery. Hendrix may
6 not, by way of a defense to such petition, challenge the validity
7 of this Consent or the Final Judgment, contest the allegations in
8 the Complaint filed by the Commission, or assert that payment of
9 disgorgement, interest and penalties the amounts referenced in
10 paragraphs II and V above should not be ordered.
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14 VI.

15 The annexed Consent and Undertaking of Michael R. Hendrix is
16 hereby incorporated herein with the same force and effect as if
17 fully set forth herein.
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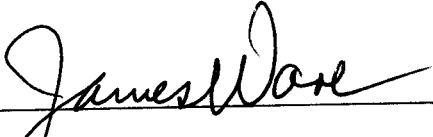
20 VII.

21 This Court shall retain jurisdiction of this action pursuant
22 to Rule 65(d) of the Federal Rules of Civil Procedure, for all
23 purposes, including the implementation and enforcement of this
24 Final Judgment.
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VIII.

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

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6 So ordered, this 24 day of April, 2003
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11 UNITED STATES DISTRICT JUDGE
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