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Securities and Exchange Commission

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

FILED

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

ATLANTIC CAPITAL CORPORATION, WALL
STREET MARKETING, INC., PULLMAN
PUBLICATIONS, INC., STEPHEN DECESARE,
MARK MISSLER, PATRICK KEPHART, HOWARD
JENKINS, SCOTT MIJARES, ROBERT THOMAS
BEATTY, VINCENT ST. CLAIR BEATTY,
MICHAEL CARDASCIA, DAVID SCOTT ROSSMAN,
ADRIAN WILSON, TIMOTHY B. DALEY and
DAVID M. CONNOCHIE,

Defendants.

96-1043-CIV-
ORL-19

FINAL CONSENT
JUDGMENT OF
PERMANENT
INJUNCTION AND
OTHER RELIEF AS
TO MARK MISSLER

Plaintiff Securities and Exchange Commission

("Commission"), having filed an Amended Complaint for
injunctive and other relief on January 9, 1997 (" Amended
Complaint") charging, among others, Defendant Mark Missler
("Missler") with violations of Sections 17(a) and (b) of the
Securities Act of 1933 ("Securities Act"), 15 U.S.C. §
77q(a) and (b), and Section 10(b) of the Securities Exchange
Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule
10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Missler having

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executed the annexed Consent of Defendant Mark Missler ("Consent"), having admitted to the jurisdiction of this Court over him and over the subject matter of this action, having waived the filing of an Answer pursuant to Rule 12 of the Federal Rules of Civil Procedure and the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and, without admitting or denying the allegations contained in the Amended Complaint (except as to jurisdiction, which are admitted), having consented to the entry of this Final Consent Judgment Of Permanent Injunction and Other Relief As To Mark Missler ("Final Judgment"), without further notice:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Missler hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, in connection with the purchase or sale of any security, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of

the circumstances under which they were made, not misleading; or

- (3) engaging in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person,

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

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Missler hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, in the offer or sale of any security, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or,
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a

fraud or deceit upon the purchaser,
in violation of Section 17(a) of the Securities Act of 1933
[15 U.S.C. § 77q(a)].

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Missler hereby is permanently enjoined and restrained, directly or indirectly, singly or in concert, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, from publishing, giving publicity to, or circulating any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof, in violation of Section 17(b) of the Securities Act OF 1933 [15 U.S.C. § 77q(a)].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant Missler pay disgorgement in the amount of \$2,647,804.87, jointly and severally with Pullman Publications, Inc., Atlantic Capital Corporation, Wall Street Marketing, Inc., Stephen DeCesare and others who may

be found liable, representing his gain from the conduct alleged in the Amended Complaint, plus pre-judgment interest thereon in the amount of \$1,379,318.27. Based upon Missler's sworn representations in his Statements of Financial Condition dated March 20, 1996 and December 5, 1996 as supplemented on June 2, 1997 and August 8, 1997 (hereinafter collectively referred to as the "Sworn Statement of Financial Condition"), and submitted to the Commission, payment of all but \$200,000 of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of the Statement of Financial Condition.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that based upon Missler's sworn representations in the Statement of Financial Condition, and submitted to the Commission, the Court is not ordering him to pay a civil penalty pursuant to Section 20(a) of the Securities Act, 15 U.S.C. §77t(a), and Section 21(d) of the Exchange Act, 15 U.S.C. §78u(d). The determination not to impose a civil penalty and to waive payment of all but \$200,000 of disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of the Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Missler's

representations to the Commission concerning his assets, income, liabilities, or 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 and without prior notice to Missler, petition this Court for an order requiring Missler to pay the remaining portion of the disgorgement, pre-judgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Missler was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Missler to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment, and the Commission may also request additional discovery. Missler may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission, the amount of disgorgement and interest, or assert that disgorgement or the payment of a civil penalty should not be ordered.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the provisions of the annexed Consent be, and the same hereby are, incorporated in this Final Judgment with the same force and effect as if fully set forth herein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Final Judgment is binding upon Missler, his agents, servants, employees, and attorneys, and upon those persons in active concert or participation with Missler who receive actual notice of this Final Judgment by personal service or otherwise, pursuant to Federal Rule of Civil Procedure 65(d).

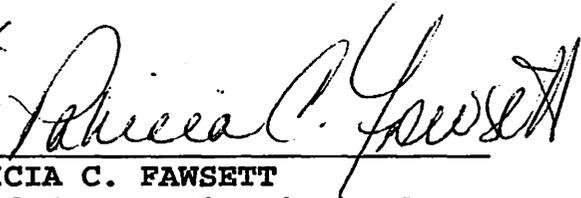
VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Final Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SO ORDERED.

Dated:

October 28, 1997



PATRICIA C. FAWSETT
United States District Judge

CARMEN J. LAWRENCE
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Counsel for Plaintiff
Securities and Exchange Commission

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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CLERK OF DISTRICT COURT
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

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ADRIAN WILSON, TIMOTHY B. DALEY and
DAVID M. CONNOCHIE,

Defendants.

96-1043-CIV-ORL-19

CONSENT OF
MARK MISSLER

1. Defendant Mark Missler ("Missler"), being fully apprised of his rights, having had the full opportunity to confer with legal counsel, having read and understood the terms of the annexed Final Consent Judgment Of Permanent Injunction And Other Relief As To Mark Missler ("Final Judgment"), appears and admits the jurisdiction of this Court over him and over the subject matter of this action, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure,

and, without admitting or denying the allegations contained in the Amended Complaint of Plaintiff Securities and Exchange Commission ("Commission"), except as to jurisdiction, which are admitted, hereby consents to the entry, without further notice, of the Final Judgment.

2. Missler agrees that this Consent of Mark Missler ("Consent") shall be incorporated by reference in and made part of the Final Judgment to be presented to the Court for signature, filing, and entry contemporaneously herewith.

3. Missler waives any right he may have to appeal from the Final Judgment.

4. Missler acknowledges that any wilful violation of any of the terms of the annexed Final Judgment may place him in contempt of this Court and subject him to civil or criminal penalties.

5. Missler acknowledges that he enters into this Consent voluntarily and that this Consent and the Final Judgment embody the entire understanding of the parties. Missler acknowledges and agrees that this proceeding, and his consent to the entry of the Final Judgment, are for the purposes of resolving this civil action only, and that no tender, offer, promise, threat or representation of any kind has been made by plaintiff Commission or any member, officer, attorney, agent, or representative thereof, to induce him to enter into this Consent.

6. Missler acknowledges that he has been informed and understands that plaintiff Commission, at its sole and exclusive discretion, may have referred or granted, or may refer or grant, access to this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction.

7. Missler agrees and undertakes to disgorge \$2,647,804.87, jointly and severally with Pullman Publications, Inc. ("Pullman"), Atlantic Capital Corporation ("Atlantic"), Wall Street Marketing, Inc. ("Wall Street"), Stephen DeCesare ("DeCesare") and others who may be found liable, representing his gains from the conduct alleged in the Complaint, plus pre-judgment interest thereon in the amount of \$1,379,318.27; provided, however, that all but \$200,000 of such disgorgement and pre-judgment interest are waived based upon Missler's sworn Statements of Financial Condition dated March 20, 1996 and December 5, 1996, and as supplemented on June 2, 1997 and August 8, 1997 (hereinafter collectively referred to as the "Sworn Statement of Financial Condition"), and submitted to the Commission.

8. Missler acknowledges that the Court is not imposing a civil penalty pursuant to Section 20(a) of the Securities Act, 15 U.S.C. §77t(a), and Section 21(d) of the Exchange Act, 15 U.S.C. §78u(d), or requiring payment of all

but \$200,000 of the disgorgement and pre-judgment interest thereon based upon the accuracy and completeness of Missler's sworn representations to the Commission concerning Missler's assets, income, liabilities, and net worth, as described in the Sworn Statement of Financial Condition, and submitted to the Commission. Missler further consents that if at any time following the entry of the Final Judgment the Commission obtains information indicating that Missler's representations to the Commission concerning his assets, income, liabilities, or 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 and without prior notice to Missler, petition the Court for an order requiring Missler to pay the remaining disgorgement of \$2,447,804.87, jointly and severally with Pullman, Atlantic, Wall Street, DeCesare and others who may be found liable, pre-judgment and post-judgment interest thereon, and a civil penalty. In connection with any such petition, the only issues shall be whether the financial information provided by Missler was fraudulent, misleading, inaccurate or incomplete in any material respect as of the time such representations were made, and the amount of civil penalty to be imposed. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to,

ordering Missler to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment, and the Commission may also request additional discovery. Missler may not, by way of defense to such petition, challenge the validity of this Consent or the Final Judgment, contest the allegations in the Complaint filed by the Commission, the amount of disgorgement and interest, or assert that the disgorgement or payment of a civil penalty should not be ordered.

9. Missler agrees to cooperate fully with the Commission in any and all investigations, actions (including this action) or proceedings brought by or on behalf of the Commission or to which the Commission is a party, concerning or relating to the facts underlying this action. Pursuant to this cooperation agreement, Missler agrees and undertakes to be interviewed by the staff of the Commission upon reasonable notice at such times and places as the staff may direct, to produce any and all documents in his possession, custody or control required by the staff, to appear and testify at such depositions, hearings or trials as may be requested by the staff, and to answer fully and truthfully all questions asked of him. Missler acknowledges and agrees that any knowing or willful failure to be accurate and truthful shall be a violation of this Consent and the Final Judgment. Missler further undertakes and agrees not to

personal service for all correspondence, service and notices as to any matter related to this Consent and the Final Judgment.

13. Missler acknowledges that he has read, understands, and agrees to comply with the policy of the Commission, set forth in 17 C.F.R. §202.5(e), not to permit a defendant to consent to a final judgment that imposes a sanction while denying any allegation or finding in the final judgment or complaint. Missler agrees not to take any action or make or cause to be made any public statement denying, directly or indirectly, any allegation or finding in the Amended Complaint. Missler further agrees not to take any action or make or cause to be made any public statement which creates, or tends to create, the impression that the Amended Complaint is without factual basis. If Missler breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and reinstate this action. Nothing in this paragraph affects Missler's testimonial obligations or his right to take legal positions in other non-Commission litigation or proceedings.

14. Missler consents that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the annexed Final Judgment and for all other purposes.

