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H. Rodriguez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CHARLES ANTHONY FARRELL,
JAMES W. FARRELL, JAMES L.
ERICKSTEEN, GARY L. MOORE,
JILL HALL, and GUIDO BENSBERG,

Defendants

Civil Action No. 97CV1684H (POR)

**FINAL JUDGMENT AS TO
DEFENDANT GARY L. MOORE**

Plaintiff SECURITIES AND EXCHANGE COMMISSION (the "COMMISSION"),
having duly commenced this action by filing its COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF (the "COMPLAINT"), and defendant GARY L. MOORE ("MOORE"), in his CONSENT
AND UNDERTAKING OF GARY L. MOORE (the "CONSENT"), having entered a general
appearance herein, having admitted the jurisdiction of this Court over him and over the subject
matter of this action, and having waived the entry of findings of fact and conclusions of law
pursuant to Rule 52 of the Federal Rules of Civil Procedure, and, having withdrawn his answer to
the COMPLAINT without admitting or denying any of the allegations of the COMPLAINT, except
as to jurisdiction, which he admits, and without trial, argument or adjudication of any issue of fact

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ENTERED ON 7.20.98

1 or law, having consented to the entry of this FINAL JUDGMENT AS TO GARY L. MOORE (the
2 "FINAL JUDGMENT"), permanently restraining and enjoining him from violating Section 17(a)
3 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the
4 Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)], and Exchange Act
5 Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder; and ordering MOORE to disgorge
6 \$24,175, representing \$18,000 in profits realized and \$6,175 in prejudgment interest, and to pay
7 postjudgment interest thereon, and it further appearing that this Court has jurisdiction over
8 MOORE and the subject matter hereof, and the Court being fully advised in the premises:

9 **I.**

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that MOORE, his agents,
11 employees, servants, attorneys-in-fact, and all those persons in active concert or participation with
12 them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and
13 each of them, be and they hereby are permanently enjoined and restrained from violating Section
14 17(a) of the Securities Act [15 U.S.C. § 77q(a)], by, directly or indirectly, using any means or
15 instrumentality of transportation or communication in interstate commerce, or the mails, in the offer
16 or sale of any security:

- 17 (a) to employ any device, scheme or artifice to defraud; or
18 (b) to obtain money or property by means of any untrue statement of a
19 material fact or any omission to state a material fact necessary in
20 order to make the statements made, in the light of the circumstances
21 under which they are made, not misleading; or
22 (c) to engage in any transaction, practice, or course of business which
23 operates or would operate as a fraud or deceit upon the purchaser.

24 **II.**

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that MOORE, his agents,
26 servants, employees, attorneys-in-fact, and all those persons in active concert or participation with
27 them who receive actual notice of this FINAL JUDGMENT by personal service or otherwise, and
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1 each of them, be and they hereby are permanently enjoined and restrained from violating Section
2 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5]
3 thereunder, by, directly or indirectly, using any means or instrumentality of interstate commerce, or
4 of the mails, or of any facility of any national securities exchange:

- 5 (1) to employ any device, scheme or artifice to defraud;
- 6 (2) to make any untrue statement of a material fact or to omit to state a material fact
7 necessary in order to make the statements made, in light of the circumstances under
8 which they were made, not misleading; or
- 9 (3) to engage in any act, practice, or course of business which operates or would operate
10 as a fraud or deceit upon any person,

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

12 **III.**

13 **IT IS FURTHER ORDERED**, that MOORE pay disgorgement in the amount of \$24,175
14 representing his gains from the conduct alleged in the COMPLAINT, which total shall be paid in
15 two installments as follows: one payment of \$10,000 due within thirty days of the entry of this
16 FINAL JUDGMENT; and one payment of the balance, \$14,175, plus postjudgment interest at the
17 rate specified in 28 U.S.C. §1961, within six months of the entry of this FINAL JUDGMENT.

18 Each payment shall: (i) be made by postal money order, certified check, or cashier's check, made
19 payable to "Clerk, U.S. District Court for the Southern District of California"; (ii) bear on its face
20 the caption "SEC v. FERRACONE, et al."; (iii) be transmitted by certified mail (return receipt
21 requested) to Clerk of the Court, U.S. District Court for the Southern District of California, U.S.
22 Courthouse, 940 Front Street, San Diego, California 92189; and (iv) be made under cover of a letter
23 that identifies the defendant, the name and case number of this action, the name of this Court, and
24 the COMMISSION's file number (HO-2986). A copy of the cover letter and the check or money
25 order shall be transmitted simultaneously to counsel for the COMMISSION. If any payment
26 required by this paragraph is not received within fifteen days after the date on which such payment
27 is due, defendant MOORE's entire outstanding balance shall immediately become due and payable
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1 and the COMMISSION may, at its sole discretion and without further notice to defendant
2 MOORE, petition the Court for an order requiring the immediate payment of such outstanding
3 balance by defendant MOORE. In connection with any such petition, the only issue shall be
4 whether defendant MOORE's payment was made within fifteen days after it was due, and
5 defendant MOORE may not, by way of defense to such petition, challenge the validity of the
6 CONSENT or this FINAL JUDGMENT. In any such petition, the COMMISSION may move the
7 Court to consider all available remedies, including, but not limited to, ordering defendant MOORE
8 to pay funds or assets, directing the forfeiture of any assets, or imposing sanctions for contempt of
9 this Court's FINAL JUDGMENT, and the COMMISSION may also request additional discovery.

10 **IV.**

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Clerk shall place
12 all such funds received into the Registry of the Court in an interest-bearing passbook account. The
13 total amount of funds to be invested will be \$24,175 plus postjudgment interest, which total shall be
14 paid by MOORE according to the payment schedule set forth in Paragraph III of this FINAL
15 JUDGMENT. The clerk shall begin placing the funds into the interest bearing passbook account
16 upon receipt of the first payment, which is due within thirty days of the entry of this FINAL
17 JUDGMENT, and shall continue to place the funds received into the account until such time as the
18 Court directs that all of the funds be disbursed. The clerk shall deduct ten percent (10%) from the
19 income earned on the investment as authorized by the Judicial Conference of the United States and
20 set by the Director of the Administrative Office, whenever such income becomes available for
21 deduction in the investment and without further order of the Court. After such time as said monies
22 are paid into the Court, the COMMISSION may propose a plan of distribution of the disgorged
23 monies, which plan shall be subject to Court approval, or may request that the monies be paid to the
24 United States Treasury.

25 **V.**

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that based upon
27 MOORE's sworn representations to the COMMISSION in his Statement of Financial Condition
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1 dated June 15, 1998, and submitted to the Commission, the Court is not ordering MOORE to pay a
2 civil penalty pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)] and
3 Section 21(d)(3) of the Securities Exchange Act of 1934 [[15 U.S.C. § 78u(d)(3)]. The
4 determination not to impose a civil penalty is contingent upon the accuracy and completeness of
5 MOORE's Statement of Financial Condition. If at any time following entry of this FINAL
6 JUDGMENT, the COMMISSION obtains information indicating that MOORE's representations to
7 the COMMISSION concerning his assets, income, liabilities, or net worth were fraudulent,
8 misleading, inaccurate or incomplete in any material respect as of the time such representations
9 were made, the COMMISSION may, at its sole discretion and without prior notice to MOORE,
10 petition this Court for an order imposing a civil penalty. In connection with any such petition, the
11 only issues shall be whether the financial information provided by MOORE was fraudulent,
12 misleading, inaccurate or incomplete in any material respect as of the time such representations
13 were made, and the amount of the civil penalty to be imposed. In its petition, the COMMISSION
14 may move this Court to consider all available remedies, including, but not limited to, ordering
15 MOORE to pay funds or assets, directing the forfeiture of any assets, or imposing sanctions for
16 contempt of this Court's FINAL JUDGMENT, and the COMMISSION may also request additional
17 discovery. MOORE may not, by way of defense to such petition, challenge the validity of his
18 CONSENT or this FINAL JUDGMENT, contest the allegations in the COMPLAINT, or assert that
19 payment of a civil penalty should not be ordered.

20 VI.

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the annexed
22 CONSENT be, and the same hereby is, incorporated herein by reference with the same force and
23 effect as if fully set forth herein.

24 VII.

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that in accordance with
26 the provisions of 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73, United States
27 Magistrate Judge Porter may conduct any proceedings necessary regarding the collection of the
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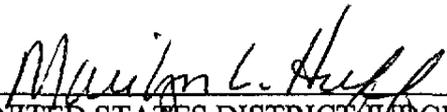
1 monies Defendant MOORE is required to disgorge under this FINAL JUDGMENT. United States
2 District Judge Huff shall retain jurisdiction over the enforcement of all other terms of this FINAL
3 JUDGMENT.

4 **VIII.**

5 **IT IS FURTHER ORDERED** that counsel presenting this order personally serve a copy
6 thereof on the clerk or the chief deputy. Absent the aforesaid service, the clerk is hereby relieved of
7 any personal liability relative to compliance with this order.

8 **IX.**

9 There being no just cause for delay, the Clerk of the Court is hereby directed, pursuant to
10 Rule 54(b) of the Federal Rules of Civil Procedure, to enter this FINAL JUDGMENT forthwith.

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14 UNITED STATES DISTRICT JUDGE

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16 DATED: 7/15/98
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