

1 LESLIE J. HUGHES (CO Bar No. 15043)

[hugheslj@sec.gov](mailto:hugheslj@sec.gov)

2 LEE C. ROBINSON (CO Bar No. 32734)

[robinsonlc@sec.gov](mailto:robinsonlc@sec.gov)

3 Attorneys for Plaintiff

4 U.S. Securities and Exchange Commission

1801 California Street, Suite 1500

5 Denver, Colorado 80202-2656

6 Telephone: (303) 844-1000

Fax: (303) 844-1068

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11 \_\_\_\_\_  
12 SECURITIES AND EXCHANGE  
13 COMMISSION,

Case No. C 06-6384 CRB

14 Plaintiff,

15 v.

16 ROMULUS S. PEREIRA,  
17 ROBERT B. STANTON,  
18 L. JOHN KERN,  
19 ANDREW D. FELDMAN,  
WILLIAM F. McFARLAND,  
LORI H. CORNMESSER,

20 Defendants.

21 \_\_\_\_\_  
22 **ORDER OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST L. JOHN KERN**

23 The Court finds that Plaintiff, Securities and Exchange Commission (“SEC”), has filed a  
24 First Amended Complaint; and Defendant L. John Kern has entered a general appearance,  
25 consented to the Court’s jurisdiction over him personally and over the subject matter of this  
26 action, consented to the entry of this Order of Permanent Injunction and Other Relief against L.  
27 John Kern (referred to as “Order of Permanent Injunction”) without admitting or denying the  
28 allegations of the First Amended Complaint (except as to jurisdiction), waived findings of fact

1 and conclusions of law, and waived any right to appeal from this Order of Permanent Injunction.

2 I.

3 IT IS ORDERED, ADJUDGED AND DECREED, that L. John Kern and his agents,  
4 servants, employees, attorneys, and all persons in active concert or participation with them who  
5 receive actual notice of this Order of Permanent Injunction by personal service or otherwise are  
6 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the  
7 Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5  
8 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of  
9 interstate commerce, or of the mails, or of any facility of any national securities exchange, in  
10 connection with the purchase or sale of any security:

- 11 (a) to employ any device, scheme, or artifice to defraud;
- 12 (b) to make any untrue statement of a material fact or to omit to state a material fact  
13 necessary in order to make the statements made, in the light of the circumstances  
14 under which they were made, not misleading; or
- 15 (c) to engage in any act, practice, or course of business which operates or would  
16 operate as a fraud or deceit upon any person.

17 II.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that L. John Kern and his  
19 agents, servants, employees, attorneys, and all persons in active concert or participation with  
20 them who receive actual notice of this Order of Permanent Injunction by personal service or  
21 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section  
22 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2  
23 promulgated thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2] by:

- 24 (a) knowingly circumventing or knowingly failing to implement a system of internal  
25 accounting controls, or knowingly falsifying any book, record or account  
26 described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)]; or

- 1 (b) directly or indirectly falsifying or causing to be falsified any book, record or  
2 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §  
3 78m(b)(2)(A)]; or
- 4 (c) directly or indirectly making or causing to be made a materially false or  
5 misleading statement, or omitting to state or causing another person to omit to  
6 state any material fact, to an accountant in connection with any audit, review or  
7 examination of the financial statements of an issuer or company, or the  
8 preparation or filing of any document or report required to be filed with the  
9 Commission; or
- 10 (d) directly or indirectly taking any action to coerce, manipulate, mislead, or  
11 fraudulently influence any independent public or certified public accountant  
12 engaged in the performance of an audit or review of financial statements of an  
13 issuer that are required to be filed with the Commission where that person knew  
14 or should have known that such action, if successful, could result in rendering the  
15 issuer's financial statements materially misleading.

16 III.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that L. John Kern and his  
18 agents, servants, employees, attorneys, and all persons in active concert or participation with  
19 them who receive actual notice of this Order of Permanent Injunction by personal service or  
20 otherwise are permanently restrained and enjoined from aiding and abetting any violation of  
21 Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)]  
22 and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and  
23 240.13a-13], by knowingly providing substantial assistance to an issuer that:

- 24 (a) fails to file with the Commission such information, documents, or annual,  
25 quarterly or periodic reports that the Commission may require or prescribe  
26 pursuant to Section 13(a) of the Exchange Act or any of the rules, regulations or  
27 forms promulgated thereunder; or
- 28

- 1 (b) files with the Commission any information, document, or report, that contains any  
2 untrue statement of a material fact, omits any material information, or otherwise  
3 fails to comply with the provisions of Section 13(a) of the Exchange Act or any of  
4 the rules, regulations or forms thereunder; or
- 5 (c) fails to add or include, in addition to the information expressly required to be  
6 included in a statement or report, such further material information as may be  
7 necessary to make the required statements, in the light of the circumstances under  
8 which they were made, not misleading; or
- 9 (d) fails to make and keep books, records, and accounts, which, in reasonable detail,  
10 accurately and fairly reflect the transactions and dispositions of the assets of the  
11 issuer.

12 IV.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that L. John Kern is liable  
14 for disgorgement of \$347,066 (three hundred and forty-seven thousand and sixty-six dollars),  
15 representing profits gained as a result of the conduct alleged in the Complaint, together with  
16 prejudgment interest thereon in the amount of \$125,430 (one hundred twenty-five thousand, four  
17 hundred and thirty dollars), for a total of \$472,496 (four hundred and seventy-two thousand, four  
18 hundred and ninety six dollars). L. John Kern shall satisfy this obligation within ten business  
19 days after the date of entry of this Order of Permanent Injunction by the Clerk of this Court, by  
20 paying \$472,496 (four hundred and seventy-two thousand, four hundred and ninety six dollars)  
21 by certified check, bank cashier's check, or United States postal money order payable to the  
22 Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of  
23 Financial Management, Securities and Exchange Commission, Operations Center, 6432 General  
24 Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, together with a cover letter identifying L.  
25 John Kern as a defendant in this action, setting forth the title and civil action number of this  
26 action and the name of this Court, and specifying that payment is made pursuant to this Order of  
27 Permanent Injunction. L. John Kern shall simultaneously transmit photocopies of such payment  
28

1 and the transmittal letter to the Commission's attorney in this action. The Commission shall  
2 remit the funds paid pursuant to this paragraph to the United States Treasury.

3 V.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that L. John Kern shall  
5 pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

6 VI.

7 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section  
8 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], ). L. John Kern is prohibited for five  
9 years following the date of entry of this Final Judgment from acting as an officer or director of  
10 any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15  
11 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15  
12 U.S.C. § 78o(d)].

13 VII.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of L.  
15 John Kern is incorporated herein with the same force and effect as if fully set forth herein, and  
16 that L. John Kern shall comply with all of the undertakings and agreements set forth therein.

17 VIII.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain  
19 jurisdiction of this matter for the purposes of enforcing the terms of this Order for Permanent  
20 Injunction and Other Relief.  
21

22 Dated: March 24, 2008

