

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAN 20 1999

LUTHER THOMAS, Clerk
Deputy Clerk

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

RONNIE R. NEIHART and SYNVIION
CORPORATION, :

Defendants. :

Civil Action File No.

1:98-CV-3341-WBH

ORDER OF PERMANENT INJUNCTION WITH FINDINGS OF FACT
AND CONCLUSIONS OF LAW AS TO DEFENDANTS NEIHART AND SYNVIION

This matter is before the Court on its December 9, 1998 Order to Show Cause why a preliminary injunction should continue against defendants Ronnie R. Neihart ("Neihart") and Synvion Corporation ("Synvion") and not convert into a permanent injunction. In that Order, the Court granted the motion of the Securities and Exchange Commission ("Commission" or "SEC") to consolidate the trial on the merits in this matter with the hearing on the preliminary injunction. The Court has previously admitted into evidence Exhibits 1-37 and the Declaration of William A. Rees and entered a preliminary injunction with other relief against Neihart and Synvion based upon the record in this case. A hearing on the instant Order to Show Cause was held on January 20, 1999 at 10 a.m. The defendants did not appear before the Court as directed for the hearing, and have consistently failed to appear before this Court in this matter.¹ Rule 52 and specifically Rule 65(d) of the Federal Rules of Civil Procedure require that every injunction shall set forth the

¹ The public filings in this case establish that service of process was perfected on defendant Synvion on December 1, 1998 and upon defendant Neihart on December 3, 1998. Neither defendant has appeared, answered or otherwise defended in this matter.

reasons for its issuance shall be specific in terms, and shall describe in reasonable detail (and not by reference to the complaint or other document) the act or acts sought to be restrained. The Court finds that the Commission has produced sufficient record evidence including the Declaration of William A. Rees and Exhibits 1-37 submitted in conjunction with its application. The following findings of fact and conclusions of law are made by the Court, based upon the record before it:

FINDINGS OF FACT

- 1) This matter involves fraud in the offer and sale of unregistered securities by Synvion Corporation ("Synvion" or the "Company") and its principal, Ronnie R. Neihart ("Neihart").
- 2) Sales are ongoing and since July 1997, Synvion sold 11,000,000 shares of stock to 70 investors in six states. (Exhibit 1 ["Stock Powers" from Synvion transfer agent]; [Bates numbers 00002544-00002715]; Exhibit 2 [Neihart Receipt/Treasury Orders]) raising approximately \$961,000 (Rees Declaration, par. 4).
- 3) In addition, Neihart has been selling stock since 1985 and from 1985 through the present, Neihart sold over 60 million shares of unregistered stock to approximately 1,500 investors in 36 states (Exhibit 3 [Synvion shareholder list as of 6/2/98]; Ex. 1 [Bates 2544 through 2715]) at prices ranging between \$.01 and \$1.00 per share (Rees Dec., par. 5; Exhibit 4 [Sworn Testimony of Edmund T. Williams], pg. 10).
- 4) Neihart sold Synvion securities to investors using oral and written misrepresentations regarding, among other things, that Synvion would be quoted on NASDAQ at a price of up to \$64 per share, (Exhibit 5 [Declaration of Donna Shotwell]; Exhibit 6 [Sworn Testimony of Rick Lowe],

pg. 24-25; Exhibit 7 [Sworn Testimony of Edmund A. Williams, pg. 16) the profitability of supercomputers which the company purportedly owns (Exhibit 7, pp. 20, 23, 25; Exhibit 4, pg. 15; Exhibit 5), and an alleged stock lease agreement with Prudential Securities, Inc. ("Prudential") (Ex. 7, pp. 13-15, 38, 47; Exhibit 9 [1/22/98 Letter from Neihart to Williams]; Exhibit 10 [Purported Prudential Stock Agreement]; Exhibit 11 [12/18/97 Letter from Neihart to Hodge]). Neihart also misappropriated at least some investor funds for his personal use. (Exhibit 12 [Declaration of Louis Linker). Finally, Neihart misrepresented the status of a cease-and-desist order entered against Neihart and the Company by the North Carolina Securities Division on December 6, 1996, prohibiting them from engaging in the fraudulent sale of unregistered stock (Exhibit 16 [copy of North Carolina C&D; order]; Ex. 7, pg. 30-31).

5) Synvion is a reporting company pursuant to Section 12(g) of the Exchange Act of 1934 ("Exchange Act") (Exhibits 14, 15, 16 [SEC Office of Filing and Information Services Certifications]); however, its stock is not traded on any exchange or over-the-counter (Exhibit 17 [Sworn Testimony of Mark Miller], pp. 7-8).

6) Synvion is delinquent in its Form 10-K and Form 10-Q filings with the Commission (Ex. 14, 15, 16). The last periodic report which Synvion filed was its Form 10-Q for the period ended March 31, 1995. (Ex. 14, 15, 16).

7. Defendant Synvion Corporation is incorporated in Nevada (Exhibit 18 [Nevada Corporate Records for Synvion]), and its principal place of business is located in Littleton, North Carolina. (Ex. 18 [sixty day list of officers, at bates 00013040]; Exhibit 19 [March 13, 1998 Business Plan of Synvion at bates 7597]).

8. Synvion has operated since 1985 (Exhibit 20 [State of Colorado Corporate Records for Cybertex])

9. The company originally incorporated as Cumberland Gas Inc. (Ex. 20 [Incorporation filed on 11/5/85 at bates 00013673]).

10. It was formerly known as Cybertex Enterprises, Inc., (Ex. 20, [articles of merger filed 10/1/97 at bates numbers 00013041 - 13046]; [articles of amendment filed 1/9/97 at bates 00013682]) and as North American Gas Corporation [Ex. 20 [Articles of Amendment at bates number 00013675 filed 10/5/88]).

11. Defendant Neihart is President and CEO of the Company and George Franklin is a corporate director. (Exhibit 19 [Synvion Business Plan 3/13/98], pg. 21; Ex. 5).

12. Defendant Ronnie R. Neihart is the President and Chief Executive Officer of the Company and has been the main officer and promoter of the Company since its inception in 1985 (Ex. 19, pg. 1, bates 00007599).

13. Neihart is 49 years old and resides in Macon, North Carolina (Exhibit 21 [Sworn Testimony of Amanda Cardinalli] pg. 52; Exhibit 22 [Neihart Ch. 13 Bankruptcy Face Page, filed on August 8/6/98, case no. 98-01760-5-ATS, E.D.N.C. in Raleigh]).

14. He has worked in the oil and gas industry since 1967. (Ex. 19 [Biography section at page 20]).

15. According to a business plan dated March 13, 1998 (Ex. 19, page 1, bates label number 00007599), Synvion is a "development stage" company which engaged in the development of oil and gas leases from its inception in 1985 until 1997, when it "halted most of its oil and gas

development activities and concentrated its effort toward other endeavors including research and development for commercial Internet telephone and expansion into the World Wide Web Internet database and services business.” (Ex. 19, pg. 1, 4 of the business plan at bates 7602).

16. The business plan also states that Synvion created a soil and water remediation division in 1997 (Ex. 19, bates 7599 and 7602) and that the Company’s assets are comprised mainly of several supercomputers valued at \$20 million (Exhibit 19, page 8 at bates 00007606; Exhibit 25 [Unfiled Forms of Synvion 8K and 10K for 12/31/95, pg. 7 of 10-K, bates 00013142 lists “Computer Equipment and Software” on the balance sheet as an asset worth \$19,999,738]).

17. Synvion is conducting an unregistered public distribution of securities in violation of Section 5 of the Securities Act of 1933 (“Securities Act”), which is ongoing (Declaration of William A. Rees, par. 27, 29-32).

18. Synvion’s own transfer agent has advised the Company and Neihart that the offering is a public distribution requiring registration under the Securities Act. The Commission took the testimony of two individuals employed by Synvion’s transfer agent. Those employees testified that in April 1998 they notified the Company and Neihart that they refused to issue any stock certificates representing original issues of stock because, in their opinion, the Company’s activity constituted a public distribution requiring registration under the Securities Act. (Ex. 21, pp. 20, 22, 29 and 43; Ex. 17, pp. 10-12, 17, 20; Ex. 1, bates 2543; Ex. 27 [Rees Declaration with Saker Letter to Neihart], bates 13650-13655A).

19. Although Neihart continued selling stock after April 1998, (Ex. 26 [Declaration of Nance]; Ex. 5), the transfer agent refused to issue any original issue stock certificates to the new

investors.² (Ex. 17, pg. 21; Ex. 28 [Letter of 9/16/98 by Cardinali to Investor VanWyk]).

20. Neihart has misappropriated at least some investor funds to his personal use. (Exhibit 12).

21. In addition, Synvion appears to have no operations, other than issuing stock. (Ex. 19 says its in "development stage" and that company phased out oil and gas leases, bates 7599 and 7602; Ex. 27, bates 13654; Ex. 25, [shows only \$22,500 in total revenue during 1995], bates 13144).

CONCLUSIONS OF LAW

A. Violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

Section 17(a) of the Securities Act, which proscribes fraudulent conduct in the offer or sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which proscribe fraudulent conduct in connection with the purchase or sale of securities, prohibit essentially the same type of conduct. See United States v. Naftalin, 441 U.S. 768, 773 n.4 (1979). Among other prohibitions, they make it unlawful to make any untrue statement of material fact or to omit to state material facts in the offer, purchase, or sale of securities. To prove violations of these prohibitions, the Commission must show that the defendants acted with scienter, Aaron v. SEC, 446 U.S. 680 (1980), Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), and that any misrepresentations or omissions were material. Basic, Inc. v. Levinson, 485 U.S. 224 (1988); TSC Industries v. Northway, Inc., 426 U.S. 438 (1976).

² The investors who bought stock after April 1998 received "stock powers" from Synvion, which are corporate resolutions authorizing the issuance of Synvion stock to the investors.

In this matter, Synvion and Neihart misrepresented several material facts about Synvion including (1) that Synvion stock would soon be quoted on NASDAQ under the ticker symbol "SYNV" at a price of up to \$64 per share; (2) the valuation of ETA10 supercomputers, their commercial viability, and the existence of contracts relating to the supercomputers with large public corporations; and (3) the existence of a profitable stock lease agreement with Prudential. Neihart also misrepresented the status of the North Carolina cease-and-desist order to investors by stating that the regulatory action was "cleared up" when, in fact, the sanction was still in full force and effect.

All of these misrepresentations and omissions are material. Misrepresentations regarding the valuation of the supercomputers are material, particularly since the ETA10s appear to be Synvion's primary assets. Azzielli v. Cohen Law Offices, 21 F.3d 512, 519 (2d Cir. 1994); LHLC Corp. v. Cluett, Peabody & Company, Inc., 842 F.2d 928, 931 (7th Cir. 1988). Similarly, misrepresentations regarding the proposed Internet applications for the ETA10s and the contracts relating to the ETA10 supercomputers are material because they create the appearance of commercial viability and corporate profit in the immediate future for Synvion.

Misrepresentations that Synvion has a lucrative stock lease agreement with Prudential, and that Synvion stock will soon be quoted on NASDAQ under the ticker symbol "SYNV" at a price of up to \$64 per share are material because they create the impression that investors purchasing stock at \$.01 - \$1.00 per share will be greatly enriched when Synvion goes public in the near future.

The failure to disclose state regulatory sanctions is material. SEC v. Hansen, 1984 Fed. Sec. L. Rep. ¶ 91, 426 at 98, 117 (S.D.N.Y. 1984).

Moreover, the Court finds that Synvion and Neihart acted with scienter. Neihart, as President and Chief Executive Officer of Synvion, knew or acted with recklessness in not knowing that Synvion never applied to be quoted on NASDAQ, that there is no stock lease arrangement with Prudential, and that the contracts with AT&T, NCR and Lucent do not exist. In addition, Neihart either knew or was reckless in not knowing that the North Carolina cease-and-desist order was still in full force and effect because he and Synvion were explicitly named as defendants in the action. Finally, Neihart knew or was reckless in not knowing that after April 1998 the transfer agent would no longer issue stock certificates to investors, yet he continued to sell new issues of stock to investors despite this knowledge.

B. Violations of Sections 5(a) and 5(c) of the Securities Act

Section 5(a) of the Securities Act makes it unlawful for any person to use any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security for which a registration statement is not in effect. Section 5(c) similarly makes it unlawful to offer to sell a security for which a registration statement has not been filed.

The Court finds that Neihart and Synvion violated the registration provisions of Section 5 because (1) no registration statement was filed or in effect as to the securities, (2) Neihart sold and offered to sell stock directly to investors, and (3) the sales were made through the use of interstate facilities or the mails to investors who resided in 36 states. Furthermore, the Company does not appear to satisfy the requirements for exemption from registration, and they have not asserted the applicability of an exemption from registration before this Court.

C. Failure to File Periodic Reports

Pursuant to Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, issuers which, like Synvion, have securities registered under Section 12(g) must file annual and quarterly reports on Forms 10-K and 10-Q. The Court finds that Synvion has violated these provisions for years in that it has not filed any annual or quarterly reports for periods ended after March 31, 1995.

The Court finds based upon the evidence before it that Company's assets have only nominal value. This raises the issue of whether Synvion's stock continues to be registered under Section 12(g) of the Exchange Act if Synvion truly has assets worth less than \$1 million. Synvion's stock is registered under Section 12(g) of the Exchange Act because it filed with the Commission a Form 10 registration statement which became effective on February 1, 1991, and because that registration has not been terminated by the filing of Form 15 with the Commission. Once registered, the issuer cannot voluntarily terminate its registration without first filing a Form 15 with the Commission. Section 12(g)(4) of the Exchange Act and Rule 12g-4 promulgated thereunder require a registrant to file Form 15 in order to terminate a Section 12(g) registration. Furthermore, once a company becomes registered under Section 12(g), the mere fact that its assets fall below \$1 million is irrelevant to its continuing registration. See Loss & Seligman, Securities Regulation, Volume IV at page 1903 (3rd Edition 1990).

The Court finds that Neihart is also liable for the Company's violations of the reporting provisions, because, as Synvion's President and Chief Executive Officer, he is a controlling person of the Company. Section 20(a) of the Exchange Act provides:

Every person who, directly or indirectly, controls any person liable under any provision of this title or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as the controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

To hold a defendant liable as a controlling person, the Commission must prove a primary violation of the securities laws and knowledge of the misconduct. In addition, "the power to exercise control over the primary violator [must be] based on a special relationship such as agency or stock ownership." See Index Fund, Inc. v. Hagopian, 609 F.Supp. 499, 506 (S.D.N.Y. 1985).³

Some circuits have held that a controlling person must be a "culpable participant" in the conduct. See, e.g. Rochez Brothers, Inc. v. Rhoads, 527 F.2d 880, 890-91 (3rd Cir. 1975); Lanza v. Drexel & Co., 475 F.2d 1273, 1299 (9th Cir. 1973); Gordon v. Burr, 506 F.2d 1080, 1085-86 (2d Cir. 1974); see also Christoffel v. E.F. Hutton & Co., 588 F.2d 665, 668-69 (9th Cir. 1978). Other circuits have adopted a less restrictive view, holding that having the means to influence the transaction at issue, even if actual participation in the subject transaction is not demonstrated, is sufficient to impose liability as a controlling person. E.g. SEC v. First Sec. Co., 463 F.2d 981, 987 (7th Cir.), cert. denied 409 U.S. 880 (1972); Metge v. Baehler, 762 F.2d 621 (8th Cir. 1985); G. A. Thompson v. Partridge, 636 F.2d 945 (5th Cir. 1981).

³ Controlling person liability under Section 20(a) does not require proof of scienter. See Polycast Technology Corp. v. Uniroyal, Inc., 792 F.Supp. 244, 258 (S.D.N.Y. 1992) (controlling person liability under Section 20(a) does not require proof of scienter); Borden, Inc. v. Spoor Behrins Campbell & Young, 735 F.Supp. 587, 588-89 (S.D.N.Y. 1990) (scienter is not a necessary pleading element of Section 20(a)); Drobbin v. Nicolet Instrument Corp., 631 F.Supp. 861, 886 (S.D.N.Y. 1986) (appropriate standard of conscious culpability is mere negligence).

The Court finds that under either standard, Neihart is liable as a controlling person. Neihart admitted in letters to investors and oral statements to Synvion's transfer agent, that he knew the Company had not filed several of its required reports with the Commission. He also recognized the need to file these reports. As Synvion's President and Chief Executive Officer, Neihart unquestionably was in control of the Company. Thus, he cannot claim that he acted in good faith and cannot claim that he did not directly or indirectly cause Synvion's failure to file the required periodic reports.

D. Injunctive Relief

In analyzing the need for injunctive relief, courts focus on whether there is a reasonable likelihood that the defendant, if not enjoined, will engage in future illegal conduct. See, e.g., SEC v. Bonastia, 614 F.2d 908, 912 (3d Cir. 1980); SEC v. Commonwealth Chemical Securities, Inc., 574 F.2d 90, 100-101 (2d Cir. 1978). In determining the likelihood of future violations, the totality of the circumstances is to be considered. SEC v. Murphy, 626 F.2d 633, 655 (9th Cir. 1980). In granting or denying injunctive relief, courts have considered, inter alia, the egregiousness of the violations, the isolated or repeated nature of the violations, the degree of scienter involved, the likelihood that the defendant's occupation will present opportunities (or lack thereof) for future violations, and the defendant's age and health. This Court finds that the violative conduct is egregious, knowing and was ongoing at least until this action was commenced, which creates the likelihood that the violations will continue to occur. Moreover, Neihart's age and health do not provide obstacles to continued violations.

The Court finds that there is a substantial likelihood of future illegal conduct because the defendants are recidivist violators who simply ignored the North Carolina cease-and-desist order and continued selling unregistered stock. Furthermore, the defendants have been warned and are aware of other ongoing securities law violations. In April 1998, Synvion's own transfer agent warned the defendants that the volume and scale of the stock sales constituted a public distribution which required registration under the Securities Act, yet Neihart did not cause a registration statement to be filed to register the offering under the Securities Act, and he continued selling stock, but not delivering stock certificates, to investors after the transfer agent's warning. Neihart also acknowledged to representatives of the transfer agent and to investors that Synvion is delinquent in its reporting obligations. Yet, Synvion has not corrected this deficiency by filing its delinquent Form 10-Ks and 10-Qs.

Furthermore, the fraudulent conduct was ongoing until this action was commenced. The Commission staff interviewed several shareholders who invested money through Neihart in September 1998, and Western Union informed the staff of wire transfers to Neihart during November 1998. Neihart has been unable to deliver stock certificates to shareholders who invested money after April 1998 because the transfer agent refused to issue the certificates. The misrepresentations are egregious. In fact, the Court finds that many of defendants' misrepresentations are outright untruths such as the listing on NASDAQ and nonexistent contracts with other publicly traded companies.

E. Disgorgement, Prejudgment Interest and Civil Penalties

In securities enforcement actions, disgorgement prevents violators from being unjustly enriched, SEC v. Commonwealth Chemical Securities, Inc., 574 F.2d at 102, and enhances the deterrent effect of such actions by making violations unprofitable. SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1104 (2d Cir. 1972). Courts also have authority to order defendants to pay prejudgment interest on their ill-gotten gains. See SEC v. First Jersey Securities, Inc., 101 F.3d 1450, 1476 (2d Cir. 1997), cert. denied, 118 S. Ct. 37 (1997). The evidence before the Court indicates that Neihart has misused investor funds. In light of his conduct in this action, disgorgement is clearly warranted.

Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act authorize the Court to impose civil penalties against any person who has violated those acts. Given the egregious violations outlined above, it is appropriate for the Court to impose penalties against Neihart in this case, however the amount of the civil penalty against Neihart will be resolved upon motion of the Commission at a later date.

F. Other Relief

It is well-established that Federal courts have the power necessary to appoint receivers in securities enforcement actions. Once the Commission properly invokes the equity jurisdiction of the Court by a prima facie showing of securities violations, the court possesses the necessary power to fashion appropriate interim remedies. SEC v. Manor Nursing Centers, 458 F.2d at 1103. When a prima facie showing of fraud and mismanagement is made, "the appointment of a receiver is often a necessary ancillary form of relief" even when no showing of insolvency is

made. SEC v. First Financial Group of Texas, 645 F.2d 429, 438 (5th Cir. 1981). Accord SEC v. Bowler, 427 F.2d 190, 198 (4th Cir. 1970); SEC v. Keller Corporation, 323 F.2d 397, 403 (7th Cir. 1963). The Court is not appointing a Receiver at this time, because it is unclear whether sufficient funds exist to compensate a Receiver in this matter. The Commission may bring an appropriate motion before the Court at such time as sufficient funds of Synvion are identified or otherwise located.

G. Officer and Director Bar

Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act authorize the imposition of a bar against any person who violates the antifraud provisions of the federal securities laws from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 or that is required to file reports pursuant to section 15(d) if that person's conduct demonstrates substantial unfitness to serve as an officer or director of any such issuer. Furthermore, once invoked, the equitable jurisdiction of a U.S. District Court allows the Court to fashion any form of ancillary equitable relief for a violation of the securities laws, including officer and director bars. SEC v. Posner, 16 F.3d 520 (2d Cir. 1994).

Factors which courts consider relevant when determining whether a bar is appropriate include (1) the egregiousness of the underlying securities law violation; (2) the defendant's repeat offender status; (3) the defendant's role or position when he engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur. SEC v. Patel, 61 F.3d 137 (2d Cir. 1995), citing Barnard,

When Is A Corporate Executive "Substantially Unfit to Serve"?, 70 N.C. L. Rev. 1489, 1492-93 (1992).

The request for an officer and director bar against Neihart is supported by the egregious nature of the ongoing violations, Neihart's high degree of scienter and the likelihood that the misconduct will recur if Neihart is not prevented from taking control of other corporations. The defendants flouted the North Carolina cease-and-desist order and continued selling stock unabated after its entry, failed to produce documents or testify in this investigation, directed shareholders not to cooperate with the Commission, and have dealt almost exclusively in cash with investors' money.

INJUNCTION AND OTHER RELIEF

I.

IT IS HEREBY ORDERED that defendants Neihart and Synvion as well as their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service, facsimile transmission or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a), by, directly or indirectly, through the use of any means or instrument of transportation and communication in interstate commerce, or of the mails,

- a. employing any device, scheme, or artifice to defraud;
- b. obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements

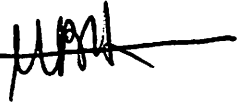
made, in the light of the circumstances under which they were made, not misleading; or

- c. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser,

in the offer or sale of any security.

II.

IT IS FURTHER ORDERED that defendants Neihart and Synvion as well as their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service, facsimile transmission or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5, 17 C.F.R. 240.10b-5, promulgated thereunder by, directly or indirectly, through the use of any means or instrumentalities of interstate commerce, or of the mails or of any facility of a national securities exchange,

- a. employing any device, scheme, or artifice to defraud;
- b. 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
- c. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, ← 

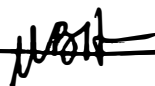
in connection with the purchase or sale of any security.

III.

IT IS FURTHER ORDERED that defendants Neihart and Synvion and their agents, servants, employees, attorneys and those persons in active concert or participation with them, who receive actual notice of the order of injunction, by personal service, facsimile or otherwise, and each of them, by use of the mails or any means or instrumentality of interstate commerce, are permanently enjoined from directly or indirectly:

(a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, in the form of common stock or any other security, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Commission as to such securities;

(b) carrying securities, or causing them to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities;

(c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, any interest in securities, in the form of common stock or any other security; 

unless a registration statement is filed with the Commission as to such securities, or while a statement is filed with the Commission as to such security is the subject of a refusal order or stop

or relating in any manner to any defendants herein including but not limited to (a) any investor investments in Synvion and (b) records evidencing the receipt and disbursal of investor funds of Synvion. As used in this order, "document" means the original and all non-identical copies (whether non-identical because of handwritten notation or otherwise) and all written or graphic matter, however produced, and any other tangible record, or electronic data compilation of any sort, including, without limitation, computer disks, computer harddrives, computer diskettes, computer tapes, correspondence, memoranda, notes, minutes, telephone records, reports, studies, telexes, diaries, calendar entries, contracts, and letters of agreement, and including any and all existing drafts of all documents.

VI.

IT IS FURTHER ORDERED that the amount of disgorgement to be ordered against defendant Neihart shall be \$961,000 representing the amount of investors' funds which he received or had control of from the sale of Synvion stock outlined in the Commission's complaint in violation of the securities laws, plus prejudgment interest thereon. The calculation of prejudgment interest Neihart is ordered to pay is computed at the Internal Revenue Service rate for unpaid taxes.

VII.

IT IS FURTHER ORDERED that Defendant Neihart shall pay disgorgement and prejudgment interest in this matter in the above amounts to the registry of the Clerk of this Court. Disgorgement and prejudgment interest shall be fully paid within 30 days of the entry of this Order.

VIII.

IT IS FURTHER ORDERED that the amount of disgorgement to be ordered against defendant Synvion shall be \$961,000 representing the amount of investors' funds it received from the sale of its stock outlined in the Commission's complaint in violation of the securities laws, plus prejudgment interest thereon. The calculation of prejudgment interest Synvion is ordered to pay is computed at the Internal Revenue Service rate for unpaid taxes.

IX.

IT IS FURTHER ORDERED that Defendant Synvion shall pay disgorgement and prejudgment interest in this matter in the above amounts to the registry of the Clerk of this Court. Disgorgement and prejudgment interest shall be fully paid within 30 days of the entry of this Order.

X.

IT IS FURTHER ORDERED that the Court is ordering defendant Neihart to pay a civil penalty in an amount to be determined at a later date, upon motion of the Commission.

XI.

IT IS FURTHER ORDERED that defendant Neihart is permanently barred from serving as an officer or director of an issuer pursuant to Section 20(e) of the Securities Act and Section 21(d)(2) of the Exchange Act. From the record in this case, the Court has found that Neihart's conduct demonstrates substantial unfitness to serve as an officer or director of any such issuer.

XII.

IT IS FURTHER ORDERED that this judgment does not resolve any claims against Neihart and/or Synvion which have been or may be asserted by any third parties arising from their actions in this matter.

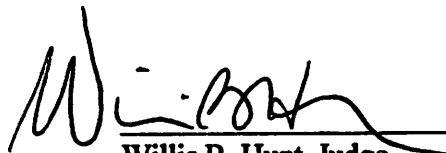
XIII.

IT IS FURTHER ORDERED that there being no reason for delay, the Clerk is directed to enter judgment in favor of the Securities and Exchange Commission and against defendants, forthwith.

XIV.

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for the purpose of enforcing this Order.

SO ORDERED, this 20 day of January, 1999.



Willis B. Hunt, Judge
UNITED STATES DISTRICT COURT