

1 MARC J. FAGEL (Cal. Bar No. 154425)
SUSAN F. LA MARCA (Cal. Bar No. 215231)
2 lamarcas@sec.gov
ELENA RO (Cal. Bar No. 197308)
3 roe@sec.gov

4 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
5 44 Montgomery Street, Suite 2600
San Francisco, California 94104
6 Telephone: (415) 705-2500
Facsimile: (415) 705-2501
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 v.

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17 M & A WEST, INC., et al.,

18 Defendants.
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Case No. C-01-3376 VRW

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AGAINST DEFENDANT
ZAHRA GILAK; ENTERING INJUNCTION
AND RELATED RELIEF; ORDERING
CIVIL PENALTIES

Date: Thursday, October 1, 2009
Time: 10:00 a.m.
Place: Courtroom 6, 17th Floor

1 The motion by plaintiff Securities and Exchange Commission (“Commission”) for summary
2 judgment against defendant Zahra Gilak, pursuant to Rule 56 of the Federal Rules of Civil
3 Procedure has been submitted to the Court. By its motion, plaintiff seeks summary judgment against
4 defendant Gilak regarding her liability for aiding and abetting securities fraud, her offer and sale of
5 securities without registration, and other related violations of the federal securities laws set forth in
6 the Commission’s complaint. Plaintiff also seeks remedial sanctions, including the entry of an
7 injunction against defendant, an order barring defendant from acting as an officer or director of a
8 public company, and an order requiring defendant to pay civil monetary penalties.

9 The Court, having considered plaintiff’s motion and any opposition or response thereto, and
10 good cause appearing therefrom, hereby finds that the Court has jurisdiction over defendant and the
11 subject matter of this litigation; that there is no genuine issue as to any material fact; and that
12 defendant knowingly provided substantial assistance to another person who, directly or indirectly
13 violated the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934
14 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and the
15 provisions prohibiting public companies from making misleading filings with the Commission in
16 periodic and current reports in Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and 17
17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13, and requiring public companies to
18 keep accurate books, records and accounts and adequate internal controls, in Sections 13(b)(2)(A)
19 and (B) of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) & (B), and is therefore liable for such
20 violations pursuant to 15 U.S.C. § 78t(e); and that Gilak, directly or indirectly, offered and sold
21 securities without appropriate registration in violation of Sections 5(a) and 5(c) of the Securities Act,
22 15 U.S.C. §§ 77e(a) and (c); and that Gilak, directly or indirectly, falsified books, records and
23 accounts and made misleading statements to accountants, in violation of Section 13(b)(5) of the
24 Exchange Act, 15 U.S.C. § 78m(b)(5), and 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2.

25 The Court further finds that, unless restrained or enjoined, defendant Gilak is likely to again
26 violate the securities laws described above, and that defendant has demonstrated herself to be
27 substantially unfit to serve as an officer or director of a public company, and that the deterrent
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1 purposes of the federal securities laws would be served by the imposition of civil penalties against
2 defendant.

3 I.

4 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Gilak, her
5 agents, servants, employees, attorneys, and all persons in active concert or participation with them
6 who receive actual notice of this Order by personal service or otherwise are permanently restrained
7 and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act, 15 U.S.C. §
8 78j(b) and Rule 10b-5 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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
19 Gilak, her agents, servants, employees, attorneys, and all persons in active concert or participation
20 with them who receive actual notice of this Order by personal service or otherwise are permanently
21 restrained and enjoined from violating, directly or indirectly, Sections 5(a) and 5(c) of the Securities
22 Act, 15 U.S.C. §§ 77e(a) and (c), by, directly or indirectly, in the absence of any applicable
23 exemption and unless a registration statement is filed and is in effect as to a security, making use of
24 any means or instruments of transportation or communication in interstate commerce or of the mails
25 to offer or to sell such security through the use or medium of any prospectus or otherwise.

26 III.

27 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
28 Gilak, her agents, servants, employees, attorneys, and all persons in active concert or participation

1 with them who receive actual notice of this Order by personal service or otherwise are permanently
2 restrained and enjoined from violating, directly or indirectly, Section 13(a) of the Exchange Act, 15
3 U.S.C. § 78m(a), and 17 C.F.R. §§ 240.12b-20 and 240.13a-1, 240.13a-11 and 240.13a-13, by
4 causing any issuer that has securities registered pursuant to Section 12 of the Securities Act, 15
5 U.S.C. § 78l, to file with the Commission a required periodic or current report that contains an
6 untrue statement of material fact or omits to state material information required to be stated therein
7 or necessary in order to make the statements made, in light of the circumstances under which they
8 were made not misleading.

9 IV.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
11 Gilak, her agents, servants, employees, attorneys, and all persons in active concert or participation
12 with them who receive actual notice of this Order by personal service or otherwise are permanently
13 restrained and enjoined from violating, directly or indirectly, Section 13(b)(2)(A) and (B) of the
14 Exchange Act, 15 U.S.C. § 78m(b)(2)(A) & (B), by causing any issuer which has a class of
15 securities registered pursuant to Section 12 of the Securities Act, 15 U.S.C. § 78l, to fail to make
16 and keep books, records, or accounts, which, in reasonable detail, accurately and fairly reflect the
17 transactions and dispositions of the assets of the issuer or to fail to devise or maintain a system of
18 internal accounting controls sufficient to record transactions as necessary to permit preparation of
19 financial statements in conformity with generally accepted accounting principles or any other criteria
20 applicable to such statements, and to maintain accountability for assets.

21 V.

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
23 Gilak, her agents, servants, employees, attorneys, and all persons in active concert or participation
24 with them who receive actual notice of this Order by personal service or otherwise are permanently
25 restrained and enjoined from violating, directly or indirectly, Section 13(b)(5) of the Exchange Act,
26 15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1, by circumventing or failing to implement a
27 system of internal accounting controls or falsifying any book, record, or account subject to Section
28 13(b)(2) of the Exchange Act, 15 U.S.C. § 78m(b)(2).

VI.

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2 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
3 Gilak, her agents, servants, employees, attorneys, and all persons in active concert or participation
4 with them who receive actual notice of this Order by personal service or otherwise are permanently
5 restrained and enjoined from violating, directly or indirectly, 17 C.F.R. § 240.13b2-2, making or
6 causing to be made as an officer or director a materially false or misleading statement to an
7 accountant in connection with an audit, review or examination of the financial statements of the
8 issuer required to be made.

VII.

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10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section
11 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), Defendant Gilak is prohibited from acting
12 as an officer or director of any issuer that has a class of securities registered pursuant to Section
13 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section
14 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

VIII.

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16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Gilak shall
17 pay civil penalties in the amount of \$ 660,000.00 pursuant to the Securities Act
18 and the Exchange Act, 15 U.S.C. §§ 77t(d) & 78u(d)(3). Defendant shall make this payment within
19 ten (10) business days after entry of this Order by certified check, bank cashier's check, or United
20 States postal money order payable to the Securities and Exchange Commission. The payment shall
21 be delivered or mailed to the Office of Financial Management, Securities and Exchange
22 Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia
23 22312; and shall be accompanied by a letter identifying Zahra Gilak as a defendant in this action;
24 setting forth the title and civil action number of this action and the name of this Court; and
25 specifying that payment is made pursuant to this Order.

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IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Order and for all other purposes.

X.

There being no just reason for delay, the Clerk is hereby ordered to enter this judgment against Defendant Gilak forthwith and without delay, which represents a final judgment.

DATED: November 13, 2009

