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3 JAMES A. HOWELL (State Bar No. 92721)
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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 SECURITIES AND EXCHANGE COMMISSION,

16 Plaintiff,

17 vs.

18 MICHAEL G. SMERASKI, TIMOTHY S.
19 HEYERDAHL, DAVID F. HELD, ELAINE A.
20 DECKER, and DEBORAH J. MATTIFORD,

21 Defendants.

22 Case No. **01**

3651

23 ~~[PROPOSED]~~ FINAL JUDGMENT OF
24 PERMANENT INJUNCTION AND OTHER
25 EQUITABLE AND STATUTORY RELIEF
26 AGAINST DAVID HELD

27 Plaintiff Securities and Exchange Commission ("Commission") has filed its Complaint
28 for Permanent Injunction and Legal and Other Equitable Relief ("Complaint") in this action.
29 Defendant David Held ("Held"), who was represented by his counsel, has submitted a Consent to
30 the Entry of Permanent Injunction and Legal and Other Equitable Relief ("Consent"), which was
31 filed simultaneously with this Final Judgment of Permanent Injunction and Legal and Other
32 Equitable Relief ("Final Judgment") and incorporated herein by reference. In the Consent, Held
33 waived service of the Summons and the Complaint, admitted the jurisdiction of this Court over
34 him and over the subject matter of this action, admitted that he was fully advised and informed of

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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1
2 the right to a judicial determination of this matter, waived findings of fact and conclusions of law
3 as provided by Rule 52 of the Federal Rules of Civil Procedure, consented to the entry of this
4 Final Judgment, without admitting or denying any of the allegations in the Complaint except as
5 set forth in the Consent, and waived notice of hearing upon the entry of this Final Judgment. The
6 Court, being fully advised in the premises, orders as follows.

7
8 I.

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Held and his agents,
10 servants, employees, attorneys-in-fact and all persons acting in concert or participation with any
11 of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and
12 each of them, are permanently enjoined and restrained from, directly or indirectly, violating
13 Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and
14 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by:

- 15 A. employing any device, scheme, or artifice to defraud;
16 B. making any untrue statement of a material fact or omitting to state a material fact
17 necessary in order to make the statements made, in the light of the circumstances
18 under which they were made, not misleading; or
19 C. engaging in any act, practice, or course of business which operates or would
20 operate as a fraud or deceit upon any person,

21 in connection with the purchase or sale of the securities of any issuer, by the use of any means or
22 instrumentality of interstate commerce, or of the mails, or of any facility of any national
23 securities exchange.

24 II.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Held and his agents,
26 servants, employees, attorneys-in-fact and all persons in active concert and participation with any
27 of them, who receive actual notice of this Final Judgment by personal service or otherwise, and
28 each of them, are permanently enjoined and restrained from, directly or indirectly, violating

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2 Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by causing any issuer
3 which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C.
4 § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to make or keep books.
5 records or accounts, which, in reasonable detail, accurately and fairly reflect the transactions and
6 dispositions of the assets of the issuer.

7
8 III.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Held and his
10 agents, servants, employees, attorneys-in-fact and all persons acting in concert or participation
11 with any of them, who receive actual notice of this Final Judgment by personal service or
12 otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly,
13 violating Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing
14 to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act
15 [15 U.S.C. § 78m(b)(2)(A)].

16 IV.

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Held and his agents,
18 servants, employees, attorneys-in-fact and all persons acting in concert or participation with any
19 of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and
20 each of them, are permanently enjoined and restrained from violating Section 13(b)(5) of the
21 Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to implement a
22 system of internal accounting controls or knowingly falsifying any book, record, or account
23 described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

24 V.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Held is
26 assessed, and shall pay to the Commission for delivery to the United States Treasury, civil
27 penalties under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], in the amount of
28 \$15,000. This payment shall be made within thirty (30) days of the entry of this Final Judgment.

1
2 Held shall pay post judgment interest, as calculated pursuant to 28 U.S.C. § 1961, on any amount
3 of the \$15,000 penalty that remains outstanding thirty days after the entry of this Final Judgment.

4 All payments shall be made by cashier's check, certified check or postal money order, payable to
5 the United States Treasury, and shall be transmitted to the Comptroller, Securities and Exchange
6 Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, under cover of a letter which
7 identifies the defendant, the caption and civil action number of this matter, this Court, and the
8 Commission's internal case number (SF-1027-B). Copies of each of the cover letters shall be
9 simultaneously transmitted to the attention of the District Administrator at the Commission's San
10 Francisco District office, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104.

11 VI.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Held shall cooperate
13 with the Commission and truthfully disclose all information with respect to the facts and events
14 relating to the ongoing investigation by the Commission that has resulted, in part, in the filing of
15 the Complaint; testify in all investigations, administrative and judicial proceedings in which the
16 Commission may request his testimony; make himself available for depositions and interviews as
17 the Commission, upon reasonable notice, may request; produce all documents within his
18 possession, custody or control, which are requested by the Commission; be accompanied at any
19 time he so desires by counsel of his choice; give truthful and accurate information and testimony;
20 and (consistent with the express waiver contained in the Consent) not assert any fifth amendment
21 privilege against self-incrimination he may have, or any other privilege or evidentiary objection
22 (other than the attorney-client privilege and work product immunity) in connection with his
23 cooperation.

24 VII.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the provisions of the
26 Consent filed concurrently with this Final Judgment are incorporated herein with the same force
27 and effect as if fully set forth herein and that Held shall comply with the Consent.
28

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for the purposes of implementing and carrying out the terms of all orders and decrees which may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

There being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

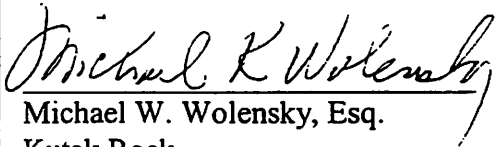
OCT X 2 2001

Dated: _____, 200_

MAXINE M. CHESNEY

United States District Court Judge

APPROVED AS TO FORM:



Michael W. Wolensky, Esq.
Kutak Rock
225 Peachtree Street, N.E.
Atlanta, GA 30303
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