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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 SECURITIES AND EXCHANGE COMMISSION,  
16 Plaintiff,  
17 vs.  
18 MARK APTON, RAJIV AGRAWAL, and SON D.  
19 PHAN  
20 Defendants.

Civil Action No. C-01-21068-JW

~~PROPOSED~~ FINAL JUDGMENT OF  
PERMANENT INJUNCTION AND LEGAL  
AND OTHER EQUITABLE RELIEF  
AGAINST MARK APTON

21 Plaintiff Securities and Exchange Commission (“Commission”) has filed its Complaint  
22 for Permanent Injunction and Other Relief (“Complaint”) in this action. Defendant Mark Apton  
23 (“Apton”) has submitted a Consent to the Entry of Permanent Injunction and Legal and Other  
24 Equitable Relief (“Consent”), which was filed simultaneously with this Final Judgment of  
25 Permanent Injunction and Legal and Other Equitable Relief (“Final Judgment”) and incorporated  
26 herein by reference. In the Consent, Apton waived service of the Summons and Complaint,  
27 admitted the jurisdiction of this Court over him and over the subject matter of this action,  
28 admitted that he was fully advised and informed of the right to a judicial determination of this  
matter, waived findings of fact and conclusions of law as provided by Rule 52 of the Federal

~~PROPOSED~~ FINAL JUDGMENT AGAINST MARK APTON  
C-01-21068-JW

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2 Rules of Civil Procedure, consented to the entry of this Final Judgment, without admitting or  
3 denying any of the allegations in the Complaint except as set forth in the Consent, and waived  
4 notice of hearing upon the entry of this Final Judgment. Good cause appearing, the court orders  
5 as follows:

6 I.

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

13 A. employing any device, scheme, or artifice to defraud;

14 B. making any untrue statement of material fact or omitting to state a material fact  
15 necessary in order to make the statements made, in the light of the circumstances under which  
16 they were made, not misleading; or

17 C. engaging in any transaction, practice, or course of business which operates or  
18 would operate as a fraud or deceit upon any person, in connection with the purchase or sale of the  
19 securities of any issuer, by the use of any means or instrumentality of interstate commerce, or of  
20 the mails, or of any facility of any national securities exchange.

21 II.

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Apton disgorge profits  
23 from his securities purchase that is the subject of this action in the amount of \$4,578.43, plus  
24 prejudgment interest in the amount of \$222.40. Payment of the disgorged amount and interest  
25 shall be made by cashier's check, certified check or postal money order payable to the United  
26 States Treasury within thirty (30) days of the entry of the Final Judgment. Such payment shall be  
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2 sent by certified mail to: Comptroller, Securities Exchange Commission, Operations Center,  
3 6432 General Green Way, Alexandria, VA 22312-0003, under cover of a letter which identifies  
4 the defendant, the caption and civil action number of this matter, this Court, and the  
5 Commission's internal case number (SF-2366-A). Copies of each of the cover letters shall be  
6 simultaneously transmitted to the attention of Helane Morrison, District Administrator, at the  
7 Commission's San Francisco District Office, 44 Montgomery Street, Suite 1100, San Francisco,  
8 CA 94104.

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10 III.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Apton pay a civil  
12 penalty pursuant to Section 21A(a)(1)(A) of the Exchange Act [15 U.S.C. § 78u-1(a)(1)(A)] in  
13 the amount of \$4,578.43. Payment of the penalty shall be made by cashier's check, certified  
14 check or postal money order payable to the United States Treasury within thirty (30) days of the  
15 entry of the Final Judgment. Apton shall pay postjudgment interest, as calculated pursuant to 28  
16 U.S.C. § 1961, on any amount of the \$4,578.43 penalty that remains outstanding thirty (30) days  
17 after the entry of this Final Judgment. All payments shall be made by cashier's check, certified  
18 check or postal money order, payable to the United States Treasury. Such payments shall be sent  
19 by certified mail to: Comptroller, Securities Exchange Commission, Operations Center, 6432  
20 General Green Way, Alexandria, VA 22312-0003, under cover of a letter which identifies the  
21 defendant, the caption and civil action number of this matter, this Court, and the Commission's  
22 internal case number (SF-2366-A). Copies of each of the cover letters shall be simultaneously  
23 transmitted to the attention of the District Administrator at the Commission's San Francisco  
24 District Office, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104.

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26 IV.

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached Consent  
28 of Apton, filed concurrently with this Final Judgment, is incorporated herein with the same force

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2 and effect as if fully set forth herein and that Apton shall fully comply with all of the  
3 undertakings and agreements incorporated in both documents.

4 V.

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

9 There being no just reason 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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12 Dated: July 25, 2002

/s/ James Ware  
United States District Court Judge

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14 APPROVED AS TO FORM:

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