UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MAXXON, INC., GIFFORD M. MABIE, JR., THOMAS R. COUGHLIN, JR., Defendants.	)	02-CV-975-H(J)

FINAL JUDGMENT

This matter comes before the Court pursuant to Plaintiff Commission's Motion for Remedies (Docket No. 168), filed February 2, 2005. A jury trial was held in this matter from November 8, 2004 to November 18, 2004, on claims by Plaintiff Securities and Exchange Commission ("the Commission") that Defendants Maxxon, Inc. ("Maxxon"), Gifford M. Mabie, Jr. ("Mabie"), and Thomas R. Coughlin, Jr. ("Coughlin") violated various sections of the Securities and Exchange Act of 1934 ("the Exchange Act") and certain rules thereunder, as well as certain sections of the Securities Act of 1933 ("the Securities Act").

The jury returned a verdict finding that Defendants Maxxon and Mabie violated Section 10(b) of the Securities and Exchange Act of 1934 (15 U.S.C. § 78j(b)) ("Section 10(b)") and Rule 10b-5 thereunder (17 C.F.R. § 240.10b-5) ("Rule 10b-5") as well as Sections 17a(2) and (3) of the Securities Act of 1933 (15 U.S.C. § § 77q(a)(2) and (3)). The jury found that the earliest date a violation of Section 10(b) of the Securities and Exchange Act of 1934 (15 U.S.C. § 78j(b)) and Rule 10b-5 thereunder occurred was October 7, 1998.

The Court allowed the parties to brief the issue of damages, which had been bifurcated from the liability phase of the trial. A hearing was held on March 2, 2005 to address the issue of damages. Plaintiff requests the following relief:

1. Permanent injunctions against Defendants Mabie and Maxxon, enjoining them from violating Section 10(b) of the Securities and Exchange Act of 1934, Rule 10b-5 thereunder, and Section 17(a)(2) and (3) of the Securities act of 1933;
2. A permanent bar disallowing Defendant Mabie from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 15(d) of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act;
3. A permanent bar prohibiting Defendant Mabie from participating in any offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock;
4. Disgorgement by Defendant Mabie of ill-gotten gains in the amount of $433,228.52;
5. Prejudgment interest on the amount of disgorgement;
6. Second-tier civil monetary penalties to be paid by Defendant Mabie in the amount of $433,228.52; and
7. Such additional relief as the Court determines is justified.

Based on the evidence adduced at trial and the arguments at the hearing held on March 2, 2005, the Court hereby issues the following Findings of Fact and Conclusions of Law, and enters Final Judgment as set forth herein below.

FINDINGS OF FACT

1. Defendant Maxxon is a Nevada Corporation with its only office in Tulsa, Oklahoma. Maxxon has never had more than five employees (all part-time), has never sold a product, and has never made a profit.

2. Defendant Mabie has been Maxxon's chief executive officer and a director since 1997. At the time this lawsuit was filed, Defendant Mabie was Maxxon's sole officer and director.[1]

3. Maxxon's stock has been publicly traded since at least 1997. At various times since 1997, Maxxon has issued large blocks of stock to Defendant Mabie, as well as Ms. Vincent and Dr. Coughlin, often for a fraction of a cent per share.

4. Maxxon is one of several similar "developmental" corporations Defendant Mabie has promoted in recent years which has not sold a product or made a profit. Several such companies existed at the time this suit was filed, some of which shared offices and employees with Maxxon, including entities by the name of Lexon, Centrex, Nubar, and Image Analysis. Defendant Mabie never received a salary from any of these companies, but was paid in stock. Defendant Mabie regularly bought large blocks of stock in these companies and sold them to the public for a profit.

5. Since Maxxon was founded, Defendants Maxxon and Mabie made public statements promoting Maxxon to the public, some of which were found by the jury to have

[1] Ms. Rhonda Vincent, who was a defendant in this lawsuit, was responsible for Maxxon's accounting and financial reporting activities. From 1997 until July of 1999, Ms. Vincent was Vice-President, Secretary, and Treasurer of Maxxon, as well as director. Ms. Vincent settled with the Commission prior to trial. Dr. Thomas Coughlin Jr., who was not found liable by the jury in this case, joined Maxxon in 1999 as its "medical director."

violated Section 10(b) and Rule 10b-5, as well as Sections 17a(2) and (3). While those statements were in the public realm, from October 7, 1998 until July 15, 2002,[2] Defendant Mabie regularly sold shares of Maxxon to the investing public, at prices inflated by Defendants' public statements.

6. Since 1997, Maxxon has stated publicly that it intends to develop and market a "safety syringe" with a retractable needle. While several prototypes of the syringe have been developed, Maxxon has never produced a cost-effective, marketable safety syringe.

7. It is uncontroverted in the record before the Court that Defendants Maxxon (through its officers and directors) and Mabie made public statements that the company had received orders for the syringe, although no marketable safety syringe was in production.

8. Between 1997 and 1999, on television and in a nationwide conference call to investors and prospective investors, Defendant Mabie, as a Maxxon representative, stated that the Maxxon safety syringe could be manufactured for the same price as a standard syringe. An effective safety syringe could not, in fact, be manufactured for that price.

9. Defendant Mabie stated to the public that the safety syringe was going through "clinical trials," yet witnesses from the laboratories hired to develop the safety syringe testified that no clinical trials were ever conducted.

10. Defendant Mabie stated publicly that the Swedish government was interested in building a plant to manufacture the Maxxon syringe. While a Maxxon representative did meet

[2] These dates have been identified as the relevant dates because the jury found that the date of the earliest violation was October 7, 1998, and Defendants first sought to correct some of their misleading statements on July 15, 2002.

with a representative of the Swedish government, no statement was made about the Swedish government's intention to build a plant.

11. Defendant Mabie made public statements that "major companies" were interested in acquiring Maxxon. However, he testified at trial that the major health care companies had made it clear that they were not interested in Maxxon until it had produced a competitive safety syringe, which Maxxon had not achieved to date.

12. On October 7, 1998, Maxxon prepared and circulated a draft press release, which was later released to the public, stating that the Patterson Group had entered into an agreement with Maxxon to assist with mergers and acquisitions. While a non-disclosure agreement was apparently entered into, the parties never entered into a final agreement regarding mergers and acquisitions.

13. In December of 2001, Maxxon made statements that it had submitted an application for approval from the Food and Drug Administration ("FDA") for the Maxxon safety syringe, and that it was anticipating approval of the design. Maxxon failed to inform the public when the FDA notified Maxxon that its application was on hold because the FDA had not received adequate information. In fact, in February of 2002, Maxxon made another announcement about its application for FDA approval. Maxxon did not attempt to correct this information until July 15, 2002.

14. Defendants Maxxon and Mabie made the various statements to the public via television, the internet, and press releases, as well as by other means.

15. A jury trial was held in this matter from November 8, 2004 to November 18, 2004, on Plaintiff's claims that Defendants Maxxon, Gifford M. Mabie, Jr., and Thomas R. Coughlin, Jr. violated various sections of the Securities and Exchange Act of 1934 and certain

rules thereunder, as well as certain sections of the Securities Act of 1933 through various actions concerning Maxxon.

16. The jury returned a verdict finding as follows:

(1) Defendant Maxxon violated Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder as well as Sections 17a(2) and (3) of the Securities Act of 1933;

(2) Defendant Mabie violated Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder as well as Sections 17a(2) and (3) of the Securities Act of 1933; and

(3) Plaintiff failed to prove that Defendant Coughlin committed a violation.

17. The jury further found that the earliest date a violation occurred was October 7, 1998. The jury did not find that Plaintiff proved that Defendants Maxxon and Mabie committed the other acts alleged in the Complaint.

18. The jury was given the following instruction, agreed upon by all of the parties, regarding Section 10(b) and Rule 10b-5:

SECTION 10(b) and RULE 10b-5 -- ELEMENTS

In order to prevail on the claim of a violation of Section 10(b) and Rule 10b-5, Plaintiff must establish each of the following elements by a preponderance of the evidence:

1. Defendants used an instrumentality of interstate commerce, or the mails, or a facility of national securities exchange, in connection with the sale of securities;
2. In connection with such purchase or sale, Defendants either:
   a. employed a device, scheme, or artifice to defraud, **or**
   b. made any untrue statement of a material fact, or omitted to state a material fact necessary to in order to make the statements that were made, in light of the circumstances under which they were made, not misleading, **or**

c. engaged in an act, practice, or course of business that operated as a fraud or deceit on any person in connection with the purchase or sale of a security; **and**

3. Defendants acted with scienter or either knowing or reckless behavior.

Plaintiff need prove only one misrepresentation or one omission for you to find that the "misrepresentation or omission" element of Section 10(b) has been satisfied.

19. Defendant Mabie testified at trial that he signed all submissions to the Commission, and had ultimate responsibility for those submissions. However, Defendant Mabie testified that he did not read those filings before signing and submitting them.

20. Defendant Mabie engaged in trading Maxxon stock throughout the period of the violations, from October 7, 1998 through July 15, 2002.

21. The value of Maxxon stock on July 15, 2002, which was the date on which Maxxon attempted to correct the public statements regarding the FDA application, was $0.28 per share.

22. The Commission introduced evidence that Defendant Mabie's proceeds from the sale of Maxxon stock during the period from October 7, 1998 to July 15, 2002 in excess of $0.28 per share totaled $433,228.52. At the hearing held on March 2, 2005, the Commission introduced another calculation, based on the evidence introduced at trial, demonstrating that Defendant Mabie's total profits realized from trading Maxxon shares throughout the period of the violations exceeded $600,000.[3]

[3] Defendants argue that Plaintiff's supplemental expert report (Docket No. 172) should be stricken because it introduces facts which were not entered into evidence at trial. The Court disagrees. The report clearly does not constitute new evidence. Rather, it represents argument based upon the evidence actually admitted at trial, namely, specifically identified exhibits and the expert report of Walter K. Rush.

CONCLUSIONS OF LAW

23. Sections 21(d) and 21(e) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78u(d) and 78u(e), authorize the Court to enjoin permanently Defendants from violating the securities laws.

24. To obtain an injunction permanently enjoining Defendants from violating the securities laws, Plaintiff must demonstrate that there is a reasonable likelihood that Defendants will engage in future violations. SEC V. Commonwealth Chem. Sec. Inc., 574 F.2d 90, 99-100 (2nd Cir. 1978). "[The] district court has broad discretion to enjoin possible future violations of law where past violations have been shown, and the court's determination that the public interest requires the imposition of permanent restraint should not be disturbed on appeal unless there has been a clear abuse of discretion." Id.

25. Plaintiff has made such a showing in this case. The questions of fact in this case were put to a jury. The jury found that Defendants Maxxon and Mabie acted with scienter and knowingly or recklessly violated the securities laws by making material misrepresentations to the public concerning Maxxon stock. Defendants' actions were not isolated incidents. Misleading statements regarding the safety syringe were made over a period of years with the intention of inflating the value of Maxxon stock. The Court finds that, given the degree of scienter and the scope of Defendant Mabie's involvement with several similar "developmental" corporations that he has promoted in recent years which have not sold a product or made a profit, there is a reasonable likelihood that future violations will occur. Therefore, permanent injunctions against Defendants Maxxon and Mabie to prevent them from violating securities regulations is warranted to protect the public.

26. Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), authorizes the Court to enjoin permanently Defendant Mabie from acting as an officer or director of any issuer that has a class of securities pursuant to section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b). The officer and director bar may be imposed based on a finding that there has been a violation of Section 10(b) of the Exchange Act and conduct that demonstrates unfitness to serve as an officer or director. "Congress' express purpose in empowering the federal courts to issue such bars was to 'combat recidivism and protect investors' and to 'strengthen the remedial effect of the SEC's enforcement program."' S.E.C. v. Drexel Burnham Lambert Inc., 837 F. Supp. 587, 613 (S.D.N.Y. 1993) (quoting S. Rep. No. 337, 101st Cong. 2d Sess. 22 (1990) at 1, 2). "In determining whether to order the injunction, a court may consider: '(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 fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in violation; and (6) the likelihood that misconduct will recur."' S.E.C. v. First Pacific Bancorp, 142 F.3d 1186 (9th Cir. 1998) (quoting S.E.C. v. Patel, 61 F.3d 137, 141 (2nd Cir. 1995)). The Court has discretion to determine the length and conditions of the bar, as "the governing statute provides that a bar on service as an officer or director that is based on substantial unfitness may be imposed 'conditionally or unconditionally' and 'permanently or for such period of time as [the court] shall determine.'" Patel, 61 F.3d at 14.

27. In the instant case, the jury found that Defendant Mabie acted with scienter in violating Section 10(b). His violation required scienter and an intent to defraud the public. Moreover, based on the facts adduced at trial, the Court finds that his violation was egregious. Defendant Mabie has been involved in numerous companies that sold large amounts of stock, but failed to ever turn a profit or even produce a product. Regarding Maxxon, Defendant made

misleading statements over a period of years. Moreover, Defendant Mabie was acting as the sole officer and director of Maxxon when many of these violations occurred. Defendant received profits of hundreds of thousands of dollars by trading Maxxon stock during the period of the violations. In defrauding the public in connection with the purchase or sale of a security, and in failing to oversee his employees in his capacity as Chief Executive Officer, Director, and Chairman of Maxxon, Defendant Mabie has demonstrated that he is unfit to serve as an officer or director for the time being. Defendant Mabie abused his position as officer and director of Maxxon for personal gain, disregarding his responsibilities to the public. The Court thus finds that enjoining Defendant Mabie from serving as an officer or director of any issuer that has a class securities registered pursuant to section 15(d) of the Exchange Act, for a period of five years, is necessary to achieve the purpose of protecting the public.

28. Section 603 of the Sarbanes-Oxley Act of 2002 codified the Court's equitable power and authority to prohibit Defendant Mabie permanently from participating in any offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act. 17 C.F.R. 240.3a51-1. All Maxxon stock qualifies as penny stock, because it was never traded on a national securities exchange, only on the National Quotations Bureau's Pink Sheets and on the Non-NASDAQ Over-the-Counter Bulletin Board, it does not meet any of the other exceptions to penny stock, never had a price above $5.00 per share, and because Maxxon never met the asset or revenue requirements.

29. "The district court has broad equitable powers to fashion appropriate relief for violations of the federal securities laws . . ." First Pacific Bancorp, 142 F.3d at 1193. In the

instant case, the Court finds a compelling need for an injunction regarding the offering of penny stock. The record compels the conclusion that Defendant Mabie's violations were knowing or reckless violations that extended over a long period of time and involved large amounts of Maxxon stock. Little was done to rectify any of the misleading statements made to the public. An injunction permanently enjoining Defendant Mabie from participating in any offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock, is necessary to achieve the purpose of protecting the public.

30. Disgorgement of ill-gotten gains in a securities fraud case "is an equitable remedy designed to deprive the wrongdoer of his unjust enrichment and to deter others from violating securities laws." S.E.C. v. Hughes Capital Corp., 124 F.3d 449, 455 (3rd Cir. 1997) (internal citation omitted). Since the purpose of disgorgement is to deprive wrongdoers of the profits of their wrongdoing, the proper measure of disgorgement is the amount of the wrongdoer's unjust enrichment. See S.E.C. v. Tome, 833 F2d. 1086, 1096 (2nd Cir. 1987). The Court has discretion, under its equity powers, in determining the proper amount of disgorgement. See Patel, 61 F.3d at 139.

31. Due to difficulties that arise in calculating the exact amount of ill-gotten gains, "disgorgement need only be a reasonable approximation of profits causally connected to the violation." S.E.C. v. First Jersey Financial Corp., 890 F.2d 1215, 1231 (D.C. Cir. 1989) While Plaintiff bears the ultimate burden of establishing that its calculated disgorgement reasonable approximates Defendant's unjust enrichment, "any 'risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created that uncertainty.'" Patel, 61 F.3d at 140 (quoting First Jersey Financial Corp., 890 F.2d at 1232).

32. While "the SEC generally must distinguish between legally and illegally obtained profits," courts have recognized that "[r]ules for calculating disgorgement must recognize that separating legal from illegal profits exactly may at times be a near-impossible task." First City Financial Corp., 890 F.2d at 1231.

33. Plaintiff has requested disgorgement in the amount of $433,228.52, which represents the difference between the price of Maxxon stock from which defendant Mabie received benefits during the period from October 7, 1998 through July 15, 2002, and $0.28, the value of the Maxxon stock on July 15, 2002, when Maxxon attempted to rectify a statement regarding the status of their FDA application. Plaintiff argues that the $0.28 per share price reflects the market's response to the updated information, and thus this valuation of the stock accurately reflects Defendants Mabie's ill-gotten gains. In the alternative, at the hearing held on March 2, 2005, Plaintiff argued that the Court could consider Defendant Mabie's entire profit realized trading from trading Maxxon stock during the period of misconduct. This amount exceeds $600,000.[4]

34. "Once the SEC has shown the existence of a fraudulent scheme to misappropriate corporate funds, defendant bears the burden of demonstrating that he received less than the full amount allegedly misappropriated and sought to be disgorged." S.E.C. v. Benson, 657 F. Supp. 1122, 1133 (S.D.N.Y. 1987). Defendant Mabie has not shown that he "received less than the

[4] Defendant offered an alternative calculation for determining the value of Defendant Mabie's ill-gotten gains. The Court considered this calculation and heard Defendant's arguments in that regard at the March 2, 2005 hearing and rejected it. Moreover, as stated above, Defendant failed to show that he "received less than the amount allegedly misappropriated and sought to be disgorged," and so failed to show that he received less than the amount sought by the Commission.

amount allegedly misappropriated and sought to be disgorged," and so has not met his burden of disproving the amount sought by the Commission.

35. The Court finds that the amount of Defendant Mabie's entire proceeds over the period from October 7, 1998 through July 15, 2002, which the record established to exceed $600,000, would be an appropriate calculation of ill-gotten gains in this case, and therefore an appropriate measure of disgorgement. Defendant profited from the sale of Maxxon stock during this period, even though he knew the value of such stock had been inflated by his misrepresentations. However, in light of the fact that Plaintiff has requested disgorgement in the lesser amount of $433,228.52, the Court finds that such amount is a reasonable calculation of Defendant Mabie's ill-gotten gains, and will therefore be the amount Defendant Mabie is required to disgorge.

36. Plaintiff also seeks additional equitable relief in the form of prejudgment interest on Defendants' ill-gotten gains. "Prejudgment interest on damages awarded pursuant to a violation of the federal securities laws is a matter of judicial discretion." S.E.C. v. Musella, 748 F. Supp. 1028, 1043 (S.D.N.Y. 1989). The Court should consider Defendant's personal wrongdoing in determining if an award of prejudgment interest is in accord with the principles of fundamental fairness. See id. In the instant case, as stated above, a jury found that Defendant Mabie acted with scienter to intentionally defraud the public concerning the value of Maxxon stock. Defendant gained personally from his misconduct, to the denigration of his role as officer and director of Maxxon. Moreover, an award of prejudgment interest deprives Defendant of the benefit of his ill-gotten gains, which, as stated above, is a primary goal of the securities regulations. See S.E.C. v. Ferrero, 1993 U.S. Dist. Lexis 21379 (D. Ind., 1993).

37. The Court finds that, in the instant case, an award of prejudgment interest is in harmony with principles of fundamental fairness, and is appropriate in this case. Musella, 748 F. Supp. at 1043. Defendant shall pay interest on the amount of his ill-gotten gains at the rate requested by Plaintiff.

38. Section 21(d)(3) of the Exchange Act establishes three tiers of penalties for violations of the Act. 15 U.S.C. sec 78u(d)(3). If the violations involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," then the Court may impose a civil penalty equal to the amount of pecuniary gain to Defendants as a result of the violations. 15 U.S.C. § 78(u)(d)(3)(B)(ii).

39. In the instant case, the jury found that Defendant Mabie acted with scienter and either knowingly or recklessly violated Section 10(b) and Rule 10b-5 thereunder. His violations involved fraud and deceit. Thus, the Commission has made the requisite showing to obtain second tier penalties. Defendant Mabie will thus be required to pay, in addition to disgorgement, a civil penalty in the amount of $433,228.52, a sum equal to the amount of disgorgement that the Court finds is proper in this case.

FINAL JUDGMENT

40. Based on the Findings of Fact and Conclusions of Law set forth above, it is hereby ordered, adjudged, and decreed that Plaintiff Commission's Motion for Remedies (Docket No. 168) is granted in part and denied in part. Defendants Mabie and Maxxon and their agents servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently enjoined from violating, or aiding and abetting the violation of, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule

10b-5 promulgated thereunder, 17 C.F.R. § 240-10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchases or sale of any security.

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit 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) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

41. It is further ordered that Defendants Mabie and Maxxon and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgement by personal service or otherwise are permanently restrained and enjoined from violating, or aiding and abetting the violation of, Section 17(a)(2) and (3) of the Securities Act of 1933, 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly;

(a) to obtain money or property by means of any untrue statement of a material fact of any omission of a material fact necessary in order to make the statements made, in light of the circumstance under which they were made, not misleading; or

(b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

42. It is further ordered that, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), Defendant Mabie is prohibited for a period of five (5) years commencing fourteen (14) days from the file date of this Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

43. It is further ordered that Defendant Mabie is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-a under the Exchange Act, 17 C.F.R. 240.3a51-1.

44. It is further ordered that Defendant Mabie is liable for disgorgement of $433,228.52, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $221,610.16, for a total of $654,838.68. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Final Judgement. In response to any such civil contempt motion by the Commission, Defendant may assert any legally permissible defense. Payments under this paragraph shall be made to the Clerk of this Court, together with a cover letter identifying Gifford M. Mabie, Jr., as defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant Mabie shall simultaneously transmit photocopies of each such payment and letter to the Commissions's

counsel in this action. Defendant relinquishes all legal and equitable right, title, and interest in such payments, and no part of the funds shall be returned to the Defendant. The Clerk shall deposit the funds into an interest bearing account. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the Clerk until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Defendant Mabie shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

45. It is further ordered that Defendant Mabie shall pay a civil penalty in the amount of $433.228.52 pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2). Defendant Mabie shall make this payment within fourteen (14) business days of the file date of this Final Judgement by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Gifford M. Mabie, Jr., as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant Mabie shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

46. The Court has duly considered the issues and rendered a decision in accordance with the above Findings of Fact and Conclusions of Law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff United States Securities and Exchange Commission and against Defendants Maxxon, Inc. and Gifford M. Mabie Jr.

47. It is further ordered that this Court shall retain jurisdiction of this matter for purposes of enforcing the terms of this Final Judgment.

IT IS SO ORDERED.

This 11th day of March, 2005.

Sven Erik Holmes, Chief Judge
United States District Court