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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

C02 05013

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

RALPH K. UNGERMANN, ALAN
J. MCMILLAN, AND JAMES O.
MITCHELL,

Defendants.

Civil Action No.

FINAL JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST ALAN J.
MCMILLAN

Plaintiff Securities and Exchange Commission ("Commission"), having filed and served upon Defendant Alan J. McMillan ("McMillan") a Summons and Complaint in this action; McMillan having admitted service upon him of the Summons and Complaint in this action and the jurisdiction of this Court over him and over the subject matter of this action; having been fully advised and informed of his right to a judicial determination of this matter; having waived the entry of findings of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure; having consented to the entry of this Final Judgment Of Permanent Injunction And Other Relief Against Alan J. McMillan ("Judgment") without admitting or denying the allegations in the Complaint, except as specifically set forth in the Consent Of Alan J. McMillan To Entry Of Final Judgment Of

1 Permanent Injunction And Other Relief (“Consent”); no notice of hearing upon the
2 entry of this Judgment being necessary; and this Court being fully advised:

3 I.

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that McMillan
5 and his agents, servants, employees, attorneys, and all persons in active concert or
6 participation with any of them, who receive actual notice of this Judgment, by
7 personal service or otherwise, and each of them, are permanently restrained and
8 enjoined from, directly or indirectly, in the offer or sale of the securities of any
9 issuer, by the use of any means or instruments of transportation or communication
10 in interstate commerce or by the use of the mails:

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

12 B. obtaining money or property by means of any untrue statement of a
13 material fact or any omission to state a material fact necessary in order
14 to make the statements made, in the light of the circumstances under
15 which they were made, not misleading; or

16 C. engaging in any transaction, practice, or course of business which
17 operates or would operate as a fraud or deceit upon the purchaser;

18 in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

19 II.

20 IT IS ORDERED, ADJUDGED, AND DECREED that McMillan and his
21 agents, servants, employees and attorneys, and all persons in active concert or
22 participation with any of them, who receive actual notice of this Judgment by
23 personal service or otherwise, and each of them, are permanently restrained and
24 enjoined from, directly or indirectly, in connection with the purchase or sale of any
25 security, by the use of any means or instrumentality of interstate commerce, or of
26 the mails, or of any facility of any national securities exchange:

27 *

28 *

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

8 in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.

9 § 78j(b) (the "Exchange Act"), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

10 III.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

12 McMillan and his agents, servants, employees and attorneys, and all persons in

13 active concert or participation with any of them, who receive actual notice of this

14 Judgment, by personal service or otherwise, and each of them, are permanently

15 restrained and enjoined from, directly, or indirectly, by the use of any means or

16 instrumentality of interstate commerce or of the mails, or of any facility of any

17 national securities exchange:

- 18 A. making or causing to be made a materially false or misleading
- 19 statement; or
- 20 B. omitting to state, or causing another person to omit to state, a material
- 21 fact necessary in order to make statements made, in light of the
- 22 circumstances under which such statements were made, not
- 23 misleading to an accountant in connection with (1) any audit or
- 24 examination of financial statements required to be made pursuant to
- 25 the Exchange Act regulations or (2) the preparation or filing of reports
- 26 or documents required to be filed with the Commission pursuant to
- 27 Exchange Act regulations or otherwise;

28 in violation of Rule 13b2-2 under the Exchange Act, 17 C.F.R. §240.13b2-2.

1 IV.

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
3 McMillan shall pay disgorgement in the amount of \$133,848, representing ill-gotten
4 gains as a result of the conduct alleged in the Complaint, plus prejudgment interest
5 in the amount of \$24,936 and civil money penalties in the amount of \$133,848.

6 V.

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that monies
8 paid pursuant to IV, above, of the Judgment shall be paid within 20 days of the
9 entry of this Judgment in the following manner:

10 (a) such monies shall be paid into this Court's registry by certified check
11 or money order drawn to the order of "Clerk, United States District Court for the
12 Northern District of California" whereupon the Clerk of this Court, or the Financial
13 Deputy Clerk, is hereby directed to deposit said certified check or money order
14 into an interest bearing account (the "Account") with the Court Registry Investment
15 System ("CRIS");

16 (b) Simultaneously with payment, McMillan shall send copies of any
17 certified checks or money orders to counsel for the Commission at its Los Angeles
18 office, located at 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California
19 90036 under cover identifying McMillan as a defendant in this action, the case
20 number of the action, the name of the Court, and the Commission's file number
21 [LA-1926];

22 (c) The Account shall be held by the CRIS until further order of the
23 Court, and distributed pursuant to a Court-approved plan to be proposed by
24 motion of the Commission, but in no event shall the monies paid revert, directly or
25 indirectly, to McMillan, or his heirs or assigns. Such a plan may provide that
26 monies in the Account shall be distributed pursuant to the Fair Fund provisions of
27 Section 308(a) of the Sarbanes-Oxley Act of 2002;

1 (d) Interest earned on the Account shall be credited to the Account and
2 shall thereafter be treated in the same manner as principal; and

3 (e) The Clerk of the Court is directed to deduct from the income earned
4 on the investment a fee, not exceeding that authorized by the Judicial Conference of
5 the United States and set by the Director of the Administrative Office at or equal to
6 10% of the income earned in the investment so held and without further order of the
7 Court.

8 VI.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
10 provisions of the Consent filed concurrently with this Judgment are incorporated
11 herein with the same force and effect as if fully set forth herein and that McMillan
12 shall comply with his Consent.

13 VII.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this
15 Court shall retain jurisdiction over this action for all purposes, including to
16 implement and enforce the terms of this Judgment and other orders and decrees
17 which may be entered, and to grant such other relief as this Court may deem
18 necessary and just.

19 VIII.

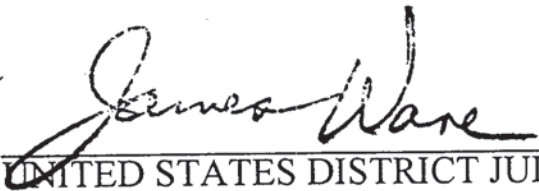
20 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
21 that during the pendency of this action against any defendant, McMillan shall remain
22 subject to the discovery provisions of the Federal Rules of Civil Procedure which
23 apply to parties, and, in addition, that McMillan agrees and undertakes, without
24 service of a subpoena, to appear for his deposition or to testify as a witness at any
25 trial of this action or at any related proceeding. Failure to comply with the
26 foregoing will subject McMillan to the remedies and sanctions set forth in Rule 37
27 of the Federal Rules of Civil Procedure and all other available remedies.
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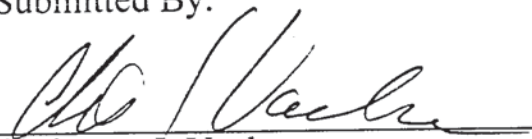
IX.

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 Judgment.

DATED: December 3, 2007


UNITED STATES DISTRICT JUDGE

Submitted By:


Christyne J. Vachon
Attorney for Plaintiff
Securities and Exchange Commission