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 U.S. DISTRICT COURT
 OFFICE OF
 JUDGE TENA CAMPBELL
 2011 FEB -8 P 2:49
 DISTRICT OF UTAH
 BY: _____
 DEPUTY CLERK

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, <p style="text-align: center;">Plaintiff,</p> <p>v.</p>	Civil Action No.2:02 CV 0039 C
MERRILL SCOTT & ASSOCIATES, LTD., MERRILL SCOTT & ASSOCIATES, INC., PHOENIX OVERSEAS ADVISERS, LTD., GIBRALTAR PERMANENTE ASSURANCE, LTD., PATRICK M. BRODY, DAVID E. ROSS, II and MICHAEL G. LICOPANTIS, <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">FINAL JUDGMENT AS TO DEFENDANT PATRICK M. BRODY</p> <p style="text-align: center;">Judge Tena Campbell</p> <p style="text-align: center;">Magistrate David Nuffer</p>

The Securities and Exchange Commission (the "Commission") filed a Complaint (Docket # 1) against Patrick Brody ("Brody" or the "Defendant") and others on or about January 15, 2002. Brody, through counsel, filed his Answer on December 31, 2003 (Docket # 220). The Commission filed a Second Motion for Summary Judgment against Brody on or about June 1, 2006 (Docket # 677). The Court granted the Commission's Second Motion for Summary Judgment against Brody on May 21, 2007 (Docket # 977). The Commission filed a Motion for Civil Monetary Penalty against Brody on or around November 20, 2007 (Docket # 1115). The Court granted that motion on or around

February 20, 2008 (Docket # 1185). The Commission requests this Court to enter a Final Judgment against Brody. Based on the foregoing, the Court rules as follows:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [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 purchase 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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 restrained and enjoined from violating

Section 17(a) of the Securities Act of 1933 (the "Securities Act") [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 employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 restrained and enjoined from violating, directly or indirectly, Section 206(1) and (2) of the Advisors Act [15 U.S.C. §§ 80b-6(1) and (2)] to use the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or,
- (b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

IT IS FURTHER ORDERED, ADJUGED, AND DECREED that, Defendant and Defendant's 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 restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)] to use the mails or any means or instrumentality of interstate commerce, directly or indirectly, to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless defendant is registered in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

V.

IT IS HEREBY FURTHER ORDERED, ADJUGED, AND DECREED that Brody is liable for disgorgement of \$13,140,000.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$3,482,163.11, for a total of \$16,622,163.11. All payments shall be made to David Broadbent, Esq., in his capacity as court-appointed Receiver in this case, by certified check, bank cashier's check or United States postal money order within 14 days of the date of the entry of this Final Judgment. The payment shall be delivered or mailed to David Broadbent, Esq., Holland & Hart, LLP, 222 South Main Street, Suite 2200, Salt Lake City, Utah 84101 and shall be accompanied by a cover letter identifying Brody 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. David Broadbent shall deposit the funds into a separate, interest bearing

account. The funds, together with any interest and income earned thereon, shall remain in the account until further order of this Court. Brody shall simultaneously transmit photocopies of said payment and letter to the Commission's counsel in this action. By making payment, Brody relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Brody.

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. In response to any such civil contempt motion by the Commission, Brody may assert any legally permissible defense. Brody shall also pay post-judgment interest pursuant to 28 U.S.C. § 1961 once payment becomes delinquent.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a third-tier civil monetary penalty in the amount of \$110,000.00 pursuant to Section 20(b) of the Securities Act and Section 21(c) of the Exchange Act. Defendant shall make this payment within 14 days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to David Broadbent, Esq., in his capacity as court-appointed Receiver in this case, by certified check, bank cashier's check or United States postal money order within 14 days of the date of the entry of this Final Judgment. The payment shall be delivered or mailed to David Broadbent, Esq., Holland & Hart, LLP, 222 South Main Street, Suite 2200, Salt Lake City, Utah 84101 and shall be accompanied by a cover letter identifying Brody 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. David Broadbent shall deposit the funds into a separate, interest bearing account. The funds, together with any interest and income earned thereon, shall remain in the account until further order of this Court. Brody shall simultaneously transmit photocopies of said payment and letter to the Commission's counsel in this action.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Commission may propose an additional plan or plans to distribute all funds paid by Brody (the "Fund") pursuant to this Final Judgment, subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, including to the Receiver for ultimate distribution pursuant to a plan proposed either by the Receiver of the Commission and approved by the Court. Regardless of whether any such Fair Fund distribution is made, the amount ordered to be paid as a civil penalty pursuant to this Final Judgment shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payments of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the Court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after the entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund,

as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Final Judgment. For the purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

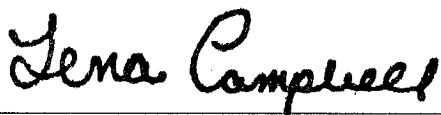
VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IX.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: February 8, 2011


UNITED STATES DISTRICT JUDGE
Tena Campbell

Presented by:

/s/ Karen L. Martinez

Thomas M. Melton
Karen L. Martinez
Daniel J. Wadley
Securities and Exchange Commission