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6

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

10 SECURITIES AND EXCHANGE COMMISSION, Case No. C-02-02427 JW (PVT)

11 Plaintiff,

12 vs.

13 DAVID MALMSTEDT and MARK
14 HUETTEMAN,

15 Defendants.

~~PROPOSED~~ FINAL JUDGMENT OF
PERMANENT INJUNCTION AND OTHER
RELIEF AS TO DEFENDANT MARK
HUETTEMAN

16
17 Plaintiff Securities and Exchange Commission (“Plaintiff” or “Commission”) has filed its
18 Complaint in this action. Defendant Mark Huetteman (“Defendant Huetteman”) has entered a
19 general appearance; consented to the Court’s jurisdiction over Defendant Huetteman and the
20 subject matter of this action; consented to entry of this Final Judgment of Permanent Injunction
21 and Other Relief (“Final Judgment”) without admitting or denying the allegations of the
22 Complaint (except as to jurisdiction); waived findings of fact and conclusions of law as provided
23 by Rule 52 of the Federal Rules of Civil Procedure; and waived any right to appeal from this
24 Final Judgment:

25 I.

26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant
27 Huetteman, Defendant Huetteman’s agents, servants, employees, attorneys, assigns, and all
28 persons in active concert or participation with them who receive actual notice of this Final

1 Judgment by personal service or otherwise are permanently restrained and enjoined from
2 violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934
3 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], by
4 using any means or instrumentality of interstate commerce, or of the mails, or of any facility of
5 any national securities exchange, in connection with the purchase or sale of any security:

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

7 (b) to make any untrue statement of a material fact or to omit to state a material fact
8 necessary in order to make the statements made, in the light of the circumstances
9 under which they were made, not misleading; or

10 (c) to engage in any act, practice, or course of business which operates or would
11 operate as a fraud or deceit upon any person.

12 II.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
14 Huetteman, Defendant Huetteman’s agents, servants, employees, attorneys, assigns, and all
15 persons in active concert or participation with them who receive actual notice of this Final
16 Judgment by personal service or otherwise are permanently restrained and enjoined from
17 violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] by causing any issuer which
18 has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l]
19 or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to file with the Commission such
20 accurate and complete information, reports, and documents as are required to be filed with the
21 Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], including but
22 not limited to, quarterly reports as prescribed by Rule 13a-13 [17 C.F.R. § 240.13a-13], such
23 information and documents to contain, in addition to such information as is expressly required to
24 be included in a statement or report to the Commission, such further material information, if any,
25 as may be necessary to make the required statements, in the light of the circumstances under
26 which they are made, not misleading, as prescribed by Commission Rule 12b-20 [17 C.F.R. §
27 240.12b-20].
28

III.

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2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
3 Huetteman, Defendant Huetteman's agents, servants, employees, attorneys, assigns, and all
4 persons in active concert or participation with them who receive actual notice of this Final
5 Judgment by personal service or otherwise are permanently restrained and enjoined from
6 violating Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], by causing any
7 issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15
8 U.S.C. §78I] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to make and keep
9 books, records, or accounts, which, in reasonable detail, accurately and fairly reflect the
10 transactions and dispositions of the assets of the issuer.

IV.

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12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
13 Huetteman, Defendant Huetteman's agents, servants, employees, attorneys, assigns, and all
14 persons in active concert or participation with them who receive actual notice of this Final
15 Judgment by personal service or otherwise are permanently restrained and enjoined from
16 violating Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing
17 to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act
18 [15 U.S.C. § 78m(b)(2)(A)].

V.

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

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Huetteman is liable for disgorgement of \$156,016, representing losses avoided as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$6,796, and a civil penalty under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], in the amount of \$40,000.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that monies paid pursuant to VI., above, of the Final Judgment shall be paid within 10 days of the entry of this Final Judgment in the following manner:

- (a) Such monies shall be paid into this Court’s registry by certified check or money order drawn to the order of “Clerk, United States District Court, Northern District of California,” whereupon the Clerk of this Court, or the Financial Deputy Clerk, is hereby directed to deposit said certified check or money order into an interest bearing account (the “Account”) with the Court Registry Investment System (“CRIS”);
- (b) Simultaneously with payment, Defendant Huetteman shall send copies of any certified checks or money orders to Susan F. LaMarca, Securities and Exchange Commission, 44 Montgomery Street, Suite 1100, San Francisco, California, 94104, under cover identifying Mark Huetteman as a defendant in this action; setting forth the title and case number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment;
- (c) The Account shall be held by the CRIS until further order of the Court, and distributed pursuant to a Court-approved plan to be proposed by motion of the Commission, but in no event shall the monies paid revert, directly or indirectly, to Defendant Huetteman, or his heirs or assigns. Such a plan may

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provide that monies in the Account shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002;

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

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

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Huetteman shall comply with all of the undertakings and agreements set forth therein.

IX.

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.

X.

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: June 16, 2003

/s/James Ware
United States District Judge

1 Approved as to form:
2

3 _____
4 /s/
5 Bruce Lewitas, Esquire
6 LEWITAS & ASSOCIATES, P.C.
7 85 East Monroe Street, Suite 3910
8 Chicago, Illinois 60603
9 (312) 346-6911
10 Counsel for Defendant Mark Huetteman
11

12 SUBMITTED BY:
13

14 _____
15 /s/
16 Susan F. LaMarca
17 SECURITIES AND EXCHANGE COMMISSION
18 44 Montgomery Street, Suite 1100
19 San Francisco, California 94104
20 (415) 705-2500
21 Counsel for Plaintiff
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