

HELANE L. MORRISON (Calif. Bar No. 127752)
ROBERT L. MITCHELL (Calif. Bar No. 161354)
MICHAEL S. DICKE (Calif. Bar No. 158187)

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 1100
San Francisco, California 94104
Telephone: (415) 705-2500

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
vs.
MICHAEL A. OFSTEDAHL, ROBERT D.
RUTNER, and WILLIAM K. KUNCZ,
Defendants.

Civil Action No. C-02-3685-JW

~~PROPOSED~~ FINAL JUDGMENT OF
PERMANENT INJUNCTION AND LEGAL
AND OTHER EQUITABLE RELIEF
AGAINST WILLIAM K. KUNCZ

Plaintiff Securities and Exchange Commission (“Commission”) has filed its Complaint for Permanent Injunction and Legal and Other Equitable Relief (“Complaint”) in this action. Defendant William K. Kuncz (“Kuncz”), who was represented by his counsel, has submitted a Consent to the Entry of Permanent Injunction and Legal and Other Equitable Relief (“Consent”), which was filed simultaneously with this Final Judgment of Permanent Injunction and Legal and Other Equitable Relief (“Final Judgment”) and incorporated herein by reference. In the Consent, Kuncz waived service of the Summons and Complaint, admitted the jurisdiction of this Court over him and over the subject matter of this action, admitted that he was fully advised and informed of the right to a judicial determination of this matter, waived findings of fact and

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2 conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure, consented to
3 the entry of this Final Judgment, without admitting or denying any of the allegations in the
4 Complaint except as set forth in the Consent, and waived notice of hearing upon the entry of this
5 Final Judgment. Good cause appearing, the court orders as follows:

6 I.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Kuncz, 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 17(a) of
11 the Securities Act of 1933 [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities and Exchange
12 Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §
13 240.10b-5] by:

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

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

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

22 II.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Kuncz
24 disgorge profits made and losses avoided in the securities transactions that are the subject of this
25 action in the amount of \$35,475.20, plus prejudgment interest in the amount of \$1,723.25.
26 Payment of the disgorged amount and interest shall be made by cashier’s check, certified check
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2 or postal money order payable to the United States Treasury within thirty (30) days of the entry
3 of the Final Judgment. Such payment shall be sent by certified mail to: Comptroller, Securities
4 and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA
5 22312-0003, under cover of a letter which identifies the defendant, the caption and civil action
6 number of this matter, this Court, and the Commission's internal case number (SF-1006-A).
7 Copies of each of the cover letters shall be simultaneously transmitted to the attention of Helene
8 Morrison, District Administrator, at the Commission's San Francisco District Office, 44
9 Montgomery Street, Suite 1100, San Francisco, CA 94104.

10 III.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Kuncz pay a
12 civil penalty pursuant to Section 21A(a)(1)(A) of the Exchange Act [15 U.S.C. § 78u-1(a)(1)(A)]
13 in the amount of \$35,475.20. 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. Kuncz shall pay postjudgment interest, as calculated pursuant to 28
16 U.S.C. § 1961, on any amount of the \$35,475.20 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-1006-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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IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached Consent of Kuncz, filed concurrently with this Final Judgment, is incorporated herein with the same force and effect as if fully set forth herein and that Kuncz shall fully comply with all of the undertakings and agreements incorporated in both documents.

V.

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

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 Final Judgment forthwith.

Dated: DEC. 04, 2002 ~~XXX~~

/S/ JAMES WARE
United States District Court Judge

APPROVED AS TO FORM:

Cristina Arguedas, Esq.
Cooper, Arguedas & Cassman
5900 Hollis Street, Suite N
Emeryville, California 94608
Attorney for William K. Kuncz