

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

U. S. SECURITIES AND EXCHANGE COMMISSION,	)	Case No. 03CV1178-JM-WVG
	)	<b>FINAL JUDGMENT AS TO</b>
Plaintiff,	)	<b>STEVEN S. SPITZER</b>
	)	Judge: Hon. Jeffrey T. Miller
v.	)	Courtroom 16
STEVEN S. SPITZER,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

The Securities and Exchange Commission having filed a Complaint and Defendant Steven S. Spitzer having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and  
2 Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
3 participation with them who receive actual notice of this Final Judgment by personal service or  
4 otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities  
5 Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the  
6 use of any means or instruments of transportation or communication in interstate commerce or by  
7 use of the mails, directly or indirectly:  
8

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

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

14 (c) to engage in any transaction, practice, or course of business which operates or  
15 would operate as a fraud or deceit upon the purchaser.  
16

17 II.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
19 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
20 participation with them who receive actual notice of this Final Judgment by personal service or  
21 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section  
22 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule  
23 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of  
24 interstate commerce, or of the mails, or of any facility of any national securities exchange, in  
25 connection with the purchase or sale of any security:  
26

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

28 (b) to make any untrue statement of a material fact or to omit to state a material fact

1 necessary in order to make the statements made, in the light of the circumstances  
2 under which they were made, not misleading; or

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

5  
6 III.

7 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
8 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
9 participation with them who receive actual notice of this Final Judgment by personal service or  
10 otherwise, are permanently restrained and enjoined from knowingly circumventing or knowingly  
11 failing to implement a system of internal accounting controls or knowingly falsifying, or causing  
12 to be falsified, any book, record, or account described in Section 13(b)(2) of the Exchange Act [15  
13 U.S.C. § 78m(b)(2)], in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]  
14 and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

15  
16 IV.

17 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
18 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
19 participation with them who receive actual notice of this Final Judgment by personal service or  
20 otherwise, are permanently enjoined from aiding and abetting any violation of Sections 13(a),  
21 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and  
22 78m(b)(2)(B)], and Exchange Act Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20,  
23 240.13a-1, and 240.13a-13], by knowingly providing substantial assistance to an issuer that has a  
24 class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or any  
25 issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §  
26 780(d)], and that:  
27  
28

- 1 (A) fails to make and keep books, records, and accounts which, in reasonable detail,  
2 accurately and fairly reflect the transactions and dispositions of the assets of the  
3 issuer; or
- 4 (B) fails to devise and maintain a system of internal accounting controls sufficient to  
5 provide reasonable assurances that: (i) transactions are executed in accordance  
6 with management's general or specific authorization; (ii) transactions are recorded  
7 as necessary (I) to permit preparation of financial statements in conformity with  
8 generally accepted accounting principles ("GAAP") or any other criteria applicable  
9 to such statements and (II) to maintain accountability for assets; (iii) access to  
10 assets is permitted only in accordance with management's general or specific  
11 authorization; and (iv) the recorded accountability for assets is compared with the  
12 existing assets at reasonable intervals and appropriate action is taken with respect  
13 to any differences;
- 14 (C) files or causes to be filed with the Commission any report required to be filed with  
15 the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C.  
16 § 78m(a)] and the Exchange Act's rules and regulations that includes financial  
17 statements that are not presented in conformity with GAAP, or is otherwise  
18 materially inaccurate; or
- 19 (D) fails to include, in statements or reports, further material information as may be  
20 necessary to make the required statements, in the light of the circumstances under  
21 which they are made, not misleading.

22  
23  
24  
25 V.

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to  
27 Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities  
28 Act [15 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer

1 that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C.  
2 § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C.  
3 § 78o(d)].

4 VI.

5 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
6 liable for disgorgement of \$2,509,171, representing profits gained as a result of the conduct  
7 alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,958,126  
8 for a total of \$4,467,297. Based on Defendant's sworn representations in his Sworn Financial  
9 Statement dated September 13, 2010, and other documents and information submitted to the  
10 Commission, however, the Court is not ordering Defendant to pay a civil penalty and payment of  
11 all but \$165,000 of the disgorgement and pre-judgment interest thereon is waived. Defendant  
12 shall satisfy this obligation by paying pursuant to the terms of the payment schedule in paragraph  
13 VIII below after entry of this Final Judgment to the Clerk of this Court, together with a cover letter  
14 identifying Steven S. Spitzer as a defendant in this action; setting forth the title and civil number  
15 of this action and the name of this Court; and specifying that payment is made pursuant to this  
16 Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter  
17 to the Commission's counsel in this action. By making this payment, Defendant relinquishes all  
18 legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned  
19 to Defendant. The Clerk shall deposit the funds into an interest bearing account with the interest  
20 bearing account that is utilized by the Court. These funds, together with any interest and income  
21 earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further  
22 order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the  
23 Administrative Office of the United States Courts, the Clerk is directed, without further order of  
24 this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent  
25 of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial  
26  
27  
28

1 Conference of the United States. The Commission may propose a plan to distribute the Fund  
2 subject to the Court's approval. Defendant shall also pay post-judgment interest on any delinquent  
3 amounts pursuant to 28 U.S.C. § 1961. The determination not to impose a civil penalty and to  
4 waive payment of all but \$165,000 of the disgorgement and pre-judgment interest is contingent  
5 upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any  
6 time following the entry of this Final Judgment the Commission obtains information indicating  
7 that Defendant's representations to the Commission concerning his assets, income, liabilities, or  
8 net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the  
9 time such representations were made, the Commission may, at its sole discretion and without prior  
10 notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion  
11 of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil  
12 penalty allowable under the law. In connection with any such petition, the only issue shall be  
13 whether the financial information provided by Defendant was fraudulent, misleading, inaccurate,  
14 or incomplete in any material respect as of the time such representations were made. In its  
15 petition, the Commission may move this Court to consider all available remedies, including, but  
16 not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or  
17 sanctions for contempt of this Final Judgment. The Commission may also request additional  
18 discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of  
19 the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the  
20 Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or  
21 a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment  
22 and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable  
23 under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any  
24 statute of limitations defense.  
25  
26  
27  
28

VII.

1 Steven S. Spitzer shall pay \$165,000 in two installments according to the following  
2 schedule: (1) \$120,000 within 14 days of entry of this Final Judgment plus post-judgment interest  
3 pursuant to 28 U.S.C. § 1961; and (2) \$45,000 within one year of entry of this Final Judgment plus  
4 post-judgment interest pursuant to 28 U.S.C. § 1961.

5 If Steven S. Spitzer fails to make any payment by the date agreed and/or in the amount  
6 agreed according to the schedule set forth above, all outstanding payments under this Final  
7 Judgment, including post-judgment interest, minus any payments made, shall become due and  
8 payable immediately without further application to the Court.  
9

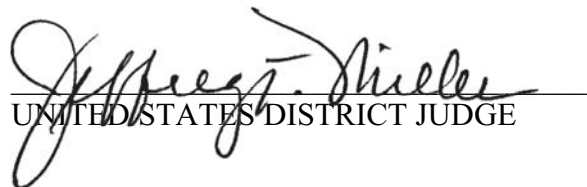
10 VIII.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is  
12 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant  
13 shall comply with all of the undertakings and agreements set forth therein.  
14

15 IX.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain  
17 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.  
18

19 Dated: November 29, 2010

20   
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26  
27  
28