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04-CV-02481-ORD

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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 SEATTLE DIVISION

13 SECURITIES AND EXCHANGE COMMISSION,

Case No. C 04-2481 Z

14 Plaintiff,

15 v.

16 MARTIN JULIEN MARKS,

17 Defendant.

18 FINAL JUDGMENT OF
19 PERMANENT INJUNCTION AND OTHER
20 EQUITABLE AND STATUTORY RELIEF
21 AGAINST DEFENDANT MARTIN JULIEN
22 MARKS

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1 Plaintiff United States Securities and Exchange Commission ("Commission") has filed its
 2 Complaint for Permanent Injunction and Other Equitable and Statutory Relief ("Complaint") in this
 3 action. Defendant Martin Julien Marks ("Marks"), who was represented by counsel, has submitted the
 4 Consent of Martin Julien Marks to Entry of Final Judgment of Permanent Injunction and Other
 5 Equitable And Statutory Relief ("Consent"), which was filed simultaneously with this [Proposed] Final
 6 Judgment of Permanent Injunction and Other Equitable And Statutory Relief Against Defendant Martin
 7 Julien Marks ("Final Judgment") and incorporated herein by reference. In the Consent, Marks waived
 8 service of the Summons and the Complaint, admitted the jurisdiction of this Court over him and over
 9 the subject matter of this action, admitted that he was fully advised and informed of the right to a
 10 judicial determination of this matter, waived findings of fact and conclusions of law as provided by Rule
 11 52 of the Federal Rules of Civil Procedure, consented to the entry of this Final Judgment, without
 12 admitting or denying any of the allegations in the Complaint except as set forth in the Consent, and
 13 waived notice of hearing upon the entry of this Final Judgment. The Court, being fully advised, orders
 14 as follows:

15 I.

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Marks and his agents,
 17 servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of
 18 them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of
 19 them, are permanently enjoined and restrained from, directly or indirectly, violating Section 10(b) of
 20 the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17
 21 C.F.R. § 240.10b-5] thereunder by:

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

1 in connection with the purchase or sale of the securities of any issuer, by the use of any means or
2 instrumentality of interstate commerce, or of the mails, or of any facility of any national securities
3 exchange.

4 II.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marks and his agents,
6 servants, employees and attorneys-in-fact, and all persons in active concert or participation with any
7 of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each
8 of them, are permanently enjoined and restrained from aiding and abetting any violation of Section
9 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 and 13a-1 promulgated thereunder
10 [17 C.F.R. §§ 240.12b-20, 240.13a-1] by knowingly providing substantial assistance to an issuer
11 which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §
12 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] in failing to file with the Commission
13 such accurate and complete information, reports, and documents as are required to be filed with the
14 Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the
15 Commission's Rules thereunder, including but not limited to, annual reports on Form 10-K [17
16 C.F.R. § 249.310] as prescribed by Commission Rule 13a-1 [17 C.F.R. § 240.13a-1] and quarterly
17 reports on Form 10-Q [17 C.F.R. § 249.308a] as prescribed by Commission Rule 13a-13 [17 C.F.R. §
18 240.13a-13], such information and documents to contain, in addition to such information as is
19 expressly required to be included in a statement or report to the Commission, such further material
20 information, if any, as may be necessary to make the required statements, in the light of the
21 circumstances under which they are made, not misleading, as prescribed by Commission Rule 12b-20
22 [17 C.F.R. § 240.12b-20].

23 III.

24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marks and his agents,
25 servants, employees and attorneys-in-fact, and all persons in active concert or participation with any
26 of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each
27 of them, are permanently enjoined and restrained from aiding and abetting any violation of Section
28 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by causing any issuer which has a class

1 of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or Section 15(d)
2 of the Exchange Act [15 U.S.C. § 78o] to fail to make or keep books, records or accounts, which, in
3 reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the
4 issuer.

5 IV.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marks and his agents,
7 servants, employees and attorneys-in-fact, and all persons in active concert or participation with any
8 of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each
9 of them, are permanently enjoined and restrained from aiding and abetting any violation of Section
10 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by causing any issuer which has a class
11 of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or Section 15(d)
12 of the Exchange Act [15 U.S.C. § 78o] to fail to devise and maintain a system of internal accounting
13 controls sufficient to provide reasonable assurances that:

14 A. transactions are executed in accordance with management's general or specific
15 authorization;

16 B. transactions are recorded as necessary (i) to permit preparation of financial
17 statements in conformity with generally accepted accounting principles or any other criteria
18 applicable to such statements, and (ii) to maintain accountability for assets;

19 C. access to assets is permitted only in accordance with management's general or
20 specific authorization; and

21 D. the recorded accountability for assets is compared with the existing assets at
22 reasonable intervals and appropriate action is taken with respect to any differences.

23 V.

24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Marks and his agents,
25 servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of
26 them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of
27 them, are permanently enjoined and restrained from, directly or indirectly, violating Section 13(b)(5)
28 of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to implement a

1 system of internal accounting controls or knowingly falsifying any book, record, or account described
2 in Section 13(h)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

3 VI.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marks and his agents,
5 servants, employees and attorneys-in-fact, and all persons acting in concert or participation with any
6 of them, who receive actual notice of this Final Judgment by personal service or otherwise, and each
7 of them, are permanently enjoined and restrained from, directly or indirectly, violating Rule 13b2-1
8 under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing to be falsified any book,
9 record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

10 VII.

11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Marks and his agents,
12 servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of
13 them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of
14 them, are permanently enjoined and restrained from violating Rule 13b2-2 of the Exchange Act [17
15 C.F.R. §240.13b2-2] by making or causing to be made a materially false or misleading statement, or
16 by omitting to state or causing another person to omit to state, any material fact necessary in order to
17 make statements made, in light of the circumstances under which such statements were made, not
18 misleading, to an accountant in connection with (A) any audit or examination of the financial
19 statements of an issuer required to be made pursuant to the federal securities laws or (B) the
20 preparation or filing of any document or report required to be filed with the Commission pursuant to
21 the federal securities laws or otherwise.

22 VIII.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section
24 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Marks is prohibited from acting as an officer
25 or director of any issuer that has a class of securities registered pursuant to Section 12 of the
26 Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the
27 Exchange Act [15 U.S.C. § 78o(d)].

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IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Marks is liable for disgorgement of \$45,777, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon. Marks shall make this payment within thirty (30) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Martin Julien Marks 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. Marks shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

X.

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 Marks shall comply with all of the undertakings and agreements set forth therein.

XI.

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.

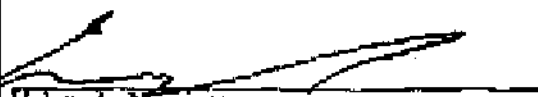
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XII.

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.

PRESENTED BY:



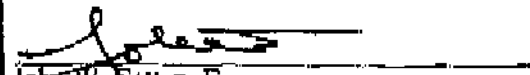
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APPROVED AS TO FORM:



John W. Cotton, Esq.

Cotton & Gandzik LLP

Counsel for Defendant Martin J. Marks

Dated this 7th day of Jan, 2005 Thomas S. Pop
United States District Judge