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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 04-60493 – Civ – COHN/SNOW

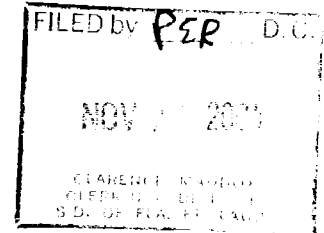
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN W. SURGENT, BARRY ABRAMS,
WARREN HEMEDINGER, SCOTT PICCININNI
PAUL TAHAN, ROBERT VITALE, MARK
CHAVEZ, SAL PUCCIO and VICTOR A.
LESSINGER,

Defendants.



FINAL JUDGMENT AS TO DEFENDANT MARK J. CHAVEZ

The Securities and Exchange Commission (the "Commission") having filed a Complaint and Defendant MARK J. CHAVEZ ("Defendant") 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, which he admits); waived findings of fact and conclusions of law; waived any right to a trial by jury of any and all claims asserted by the Commission, and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, his agents, servants, employees, attorneys, and all those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, are hereby permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange

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Act”) [15 U.S.C. § 78j(b)] and Exchange Act 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 any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (1) to employ any device, scheme or artifice to defraud,
- (2) 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
- (3) 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, his agents, servants, employees, attorneys, and all those 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 (“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:

- (1) to employ any device, scheme, or artifice to defraud;
- (2) 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

- (3) 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, his 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 Securities Act Sections 5(a) and 5(c) [15 U.S.C. §§ 77e(a) and 77e(c)] by, directly or indirectly, in the absence of any applicable exemption:

- (1) unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (2) unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (3) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the

registration statement) any public proceeding of examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant, his agents, servants, employees, attorneys, and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, are hereby permanently enjoined and restrained from aiding and abetting any violations of Exchange Act Section 15(g) [15 U.S.C § 78o(g)] and Exchange Act Rules 15g-2, 15g-4 and 15g-5 [17 C.F.R. §§ 240.15g-2, 15g-4 and 15g-5], by knowingly providing substantial assistance to a broker or dealer, directly or indirectly, singly or in concert, by use of the mails or any means or instrumentality of interstate commerce, effecting any transaction in, or inducing or attempting to induce the purchase or sale of any penny stock (as defined in Exchange Act Section 3(a)(51)(A) [15 U.S.C. § 78c (a)(51)(A)] and Exchange Act Rule 3a51-1 [17 C.F.R. § 240.3a51-1]) by, with, or for the account of any customer without complying with the following requirements:

- (1) prior to effecting such transaction, having furnished the customer a document containing the information set forth in Schedule 15G, 17 C.F.R. § 240.15g-100, and having obtained from the customer a manually signed and dated written acknowledgment of receipt of the document; and
- (2) disclosing to such customer, orally or in writing prior to effecting any such transaction, and giving or sending to the customer in writing, at or prior to the time that any written confirmation of such transaction is given or sent

to the customer pursuant to 17 C.F.R. § 240.10b-10, the following information:

- (a) the aggregate amount of any compensation received by the broker or dealer in connection with such transaction; and
- (b) the aggregate amount of cash compensation that any natural person associated with the broker or dealer who has communicated with the customer concerning the transaction at or prior to receipt of the customer's transaction order (other than any person whose function is solely clerical or ministerial) has received or will receive from any source in connection with the transaction that is determined at or prior to the time of the transaction, including separate disclosure of the source and amount of such compensation that is not paid by the broker or dealer.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer or issuer for purposes of issuing, trading or inducing or attempting to induce the purchase or sale of any penny stock. All equity stocks are penny stock unless exempted per Exchange Act Section 3(a)(51) [15 U.S.C. § 78c (a)(51)(A)] and Exchange Act Rule 3a51-1 [17 C.F.R. § 240.3a51-1].

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is liable for \$242,545.00, representing amounts received by Defendant with

regard to sales of Orex stock or efforts to sell Orex stock, together with pre-judgment interest in the amount of \$96,670.50, for a total of \$339,215.50. Based upon Defendant's sworn representations in his Statement of Financial Condition dated September 1, 2004, and other documents and information submitted to the Commission, however, the Court is not ordering Defendant to pay a civil penalty, and payment of the disgorgement and pre-judgment interest thereon is waived. The determination not to impose a civil penalty and to waive payment of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in

the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant Mark J. Chavez, a copy of which is attached hereto be, and hereby is, incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement 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.

SO ORDERED.


UNITED STATES DISTRICT JUDGE

Dated: NOVEMBER 24, 2004

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 04-60493 – Civ – COHN/SNOW

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOHN W. SURGENT, BARRY ABRAMS,
WARREN HEMEDINGER, SCOTT PICCININNI
PAUL TAHAN, ROBERT VITALE, MARK
CHAVEZ, SAL PUCCIO and VICTOR A.
LESSINGER,

Defendants.

CONSENT AND UNDERTAKING OF DEFENDANT MARK J. CHAVEZ

1. Defendant MARK J. CHAVEZ (“Defendant”) acknowledges having been served with the Complaint in this action, enters a general appearance and admits the jurisdiction of this Court over him and over the subject matter of this action.

2. Without admitting or denying any of the allegations of the Complaint, except as to personal and subject matter jurisdiction, which he admits, Defendant hereby consents to the entry of the Final Judgment as to Defendant Mark J. Chavez (“Final Judgment”), in the form attached hereto and incorporated by reference, which, among other things:

- (a) permanently restrains and enjoins Defendant from violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)], and Section 10(b) of the

Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], and from aiding and abetting violations of Exchange Act Section 15(g) [15 U.S.C. § 78o(g)] and Exchange Act Rules 15g-2, 15g-4 and 15g-5 [17 C.F.R. §§ 240.15g-2, 240.15g-4 and 240.15g-5];

- (b) permanently bars Defendant from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer or issuer for purposes of issuing, trading or inducing or attempting to induce the purchase or sale of any penny stock; and
- (c) orders Defendant to pay disgorgement in the amount of \$242,545, plus prejudgment interest in the amount of \$96,670.50, for a total of \$339,215.50.

3. Defendant acknowledges that the Court is not imposing a civil penalty or requiring payment of \$242,545 in disgorgement, plus pre-judgment interest in the amount of \$96,670.50, for a total of \$339,215.50, based on Defendant’s sworn representations in his Statement of Financial Condition dated September 1, 2004, and other documents and information submitted to the Commission. Defendant further consents that if at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant’s representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order

requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law.

In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In any such petition, the Commission may move the Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in the Complaint; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives any right to a trial by jury of any and all claims asserted by the Commission in the Complaint.

6. Defendant agrees that he will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the

Federal Rules of Civil Procedure, and hereby waives any objection he may have based thereon.

7. Defendant waives the right, if any, to appeal from the entry of the Final Judgment.

8. Defendant enters into this Consent and Undertaking (“Consent”) voluntarily, and represents that no threats, offers, promises or inducements of any kind have been made by the Commission or by any member, officer, agent, employee or representative of the Commission to induce him to enter into this Consent.

9. Defendant agrees that this Consent shall be incorporated by reference into the Final Judgment with the same force and effect as if fully set forth therein.

10. Defendant waives service upon him of the Final Judgment, and agrees that entry of the Final Judgment by this Court, and its filing with the Clerk of the Court, will constitute notice to him of the terms and conditions of the Final Judgment. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any

remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings" 17 C.F.R. § 202.5(e). In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that he is not the prevailing party in this action since the parties have reached a good faith settlement.

14. In connection with this case and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, and with regard to Defendant's activities and the activities of others about which the Commission or its staff may inquire with regard to the subject matter of this case, Defendant: (i) agrees to comply with any and all reasonable requests by the Commission's staff for documents or other information pertaining to such matters, without service of a subpoena; (ii) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice and without service of a subpoena; (iii) will cooperate with the Commission's staff, provide information, documents, discovery, and testify at any deposition, hearing or trial, upon reasonable notice and without service of a subpoena; (iv) will accept service by mail or facsimile transmission of notices or subpoenas issued or served by the Commission for documents or testimony at depositions, hearings, trials, and other proceedings; (v) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (vi) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses

Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S.

Government per diem rates; (vii) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena; and (viii) until the final disposition of this case against all of the defendants, including any further proceedings on remand after any appeals that might occur, Defendant agrees to keep the Commission fully informed of the address at which Defendant actually resides and can be found. Defendant understands that his failure to testify truthfully or to comply with the above undertaking may result in contempt proceedings or charges of perjury and obstruction of justice.

15. Defendant understands and agrees that this Consent and the Final Judgment embody the entire agreement and understanding by and between him and the SEC relating to the settlement of this action. Defendant further understands and agrees that there are no express or implied promises, representations, or agreements between him and the SEC other than those expressly set forth or referred to in the documents described in this paragraph and that nothing in those documents is binding on any other agency of government, whether state, local, or federal.

16. Defendant agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

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