

P-1592-0

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 SOUTHERN DIVISION

JS-6

4 SECURITIES AND EXCHANGE  
5 COMMISSION,

Case No. SACV11-1168DOC (ANx)

6 Plaintiff,

7 v.

**FINAL JUDGMENT AS TO  
ROGER A. WITTENBACH**

8 DOUGLAS V. DECINCES, JOSEPH  
9 J. DONOHUE, FRED SCOTT  
10 JACKSON, and ROGER A.  
11 WITTENBACH,

Defendants.

12 The Securities and Exchange Commission having filed a Complaint and  
13 Defendant Roger A. Wittenbach ("Defendant") having entered a general appearance;  
14 consented to the Court's jurisdiction over Defendant and the subject matter of this  
15 action; consented to entry of this Final Judgment without admitting or denying the  
16 allegations of the Complaint (except as to jurisdiction); waived findings of fact and  
17 conclusions of law; and waived any right to appeal from this Final Judgment:  
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20 I.

21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant  
22 and Defendant's agents, servants, employees, attorneys, and all persons in active  
23 concert or participation with them who receive actual notice of this Final Judgment  
24 by personal service or otherwise are permanently restrained and enjoined from  
25 violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of  
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1 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated  
2 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of  
3 interstate commerce, or of the mails, or of any facility of any national securities  
4 exchange, in connection with the purchase or sale of any security:  
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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  
8 material fact necessary in order to make the statements made, in the  
9 light of the circumstances under which they were made, not misleading;  
10 or  
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12 (c) to engage in any act, practice, or course of business which operates or  
13 would operate as a fraud or deceit upon any person.  
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15 **II.**

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17 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
18 Defendant and Defendant's agents, servants, employees, attorneys, and all persons in  
19 active concert or participation with them who receive actual notice of this Final  
20 Judgment by personal service or otherwise are permanently restrained and enjoined  
21 from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule  
22 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any  
23 tender offer or request or invitation for tenders, from engaging in any fraudulent,  
24 deceptive, or manipulative act or practice, by:  
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1 (a) purchasing or selling or causing to be purchased or sold the  
2 securities sought or to be sought in such tender offer, securities  
3 convertible into or exchangeable for any such securities or any  
4 option or right to obtain or dispose of any of the foregoing  
5 securities while in possession of material information relating to  
6 such tender offer that Defendant knows or has reason to know is  
7 nonpublic and knows or has reason to know has been acquired  
8 directly or indirectly from the offering person; the issuer of the  
9 securities sought or to be sought by such tender offer; or any  
10 officer, director, partner, employee or other person acting on  
11 behalf of the offering person or such issuer, unless within a  
12 reasonable time prior to any such purchase or sale such  
13 information and its source are publicly disclosed by press release  
14 or otherwise; or

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19 (b) communicating material, nonpublic information relating to a  
20 tender offer, which Defendant knows or has reason to know is  
21 nonpublic and knows or has reason to know has been acquired  
22 directly or indirectly from the offering person; the issuer of the  
23 securities sought or to be sought by such tender offer; or any  
24 officer, director, partner, employee, advisor, or other person  
25 acting on behalf of the offering person or such issuer, to any  
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1 person under circumstances in which it is reasonably foreseeable  
2 that such communication is likely to result in the purchase or sale  
3 of securities in the manner described in subparagraph (a) above,  
4 except that this paragraph shall not apply to a communication  
5 made in good faith  
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- 7 (i) to the officers, directors, partners or employees of the  
8 offering person, to its advisors or to other persons,  
9 involved in the planning, financing, preparation or  
10 execution of such tender offer;  
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12 (ii) to the issuer whose securities are sought or to be sought by  
13 such tender offer, to its officers, directors, partners,  
14 employees or advisors or to other persons involved in the  
15 planning, financing, preparation or execution of the  
16 activities of the issuer with respect to such tender offer; or  
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18 (iii) to any person pursuant to a requirement of any statute or  
19 rule or regulation promulgated thereunder.  
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22 **III.**

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
24 Defendant is liable for disgorgement of \$201,692 representing profits gained as a  
25 result of the conduct alleged in the Complaint *provided, however*, that this obligation  
26 shall be offset, on a dollar-for-dollar basis, by the \$201,000 that was seized by the  
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1 Internal Revenue Service at the direction of the U.S. Attorney's Office in the Central  
2 District of California from the Defendant's brokerage account at Fidelity  
3 Investments, account number [REDACTED] 194 on or about October 8, 2009 (the "Seized  
4 Funds"), upon the Defendant's agreement that he shall not contest, directly or  
5 indirectly, the seizure of the Seized Funds, or any amount thereof, in any civil or  
6 criminal proceeding. Defendant is further liable for prejudgment interest in the  
7 amount of \$5,768, and shall pay a civil penalty in the amount of \$214,906 pursuant  
8 to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].  
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11 Defendant shall pay a total of \$221,366 within 14 days after entry of this Final  
12 Judgment by certified check, bank cashier's check, or United States postal money  
13 order payable to the Securities and Exchange Commission. In the event that the  
14 Seized Funds are not retained by the United States through a civil or criminal  
15 proceeding, Defendant agrees that he shall immediately pay the Seized Funds  
16 directly to the Commission as soon as they come into his possession or are held by  
17 another for his benefit by certified check, bank cashier's check, or United States  
18 postal money order payable to the Securities and Exchange Commission.  
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21 The payment(s) described above shall be delivered or mailed to the Securities  
22 and Exchange Commission, Office of Financial Management, 100 F. Street, NE,  
23 Stop 6042, Washington, D.C. 20549, and shall be accompanied by a letter  
24 identifying Roger A. Wittenbach as a defendant in this action; setting forth the title  
25 and civil action number of this action and the name of this Court; and specifying that  
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1 payment is made pursuant to this Final Judgment. Defendant shall simultaneously  
2 transmit photocopies of such payment and letter to the Commission's counsel in this  
3 action: Elaine C. Greenberg, Associate Director, Philadelphia Regional Office,  
4 Securities and Exchange Commission, 701 Market Street, Suite 2000, Philadelphia,  
5 PA 19106. By making this payment(s), Defendant relinquishes all legal and  
6 equitable right, title, and interest in such funds, and no part of the funds shall be  
7 returned to Defendant. Defendant shall pay post-judgment interest on any  
8 delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the  
9 funds paid pursuant to this paragraph to the United States Treasury.  
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13 **IV.**

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

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2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court  
3 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this  
4 Final Judgment.  
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7 Dated: August 9, 2011  
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9 *David O. Carter*  
10 DAVID O. CARTER, U.S. DISTRICT JUDGE  
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