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NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

CRB

CV 09

1259

13 SECURITIES AND EXCHANGE COMMISSION,
14 Plaintiff,
15 vs.
16 DAVID SCOTT CACCHIONE,
17 Defendant.

Case No. CV

~~PROPOSED~~ FINAL JUDGMENT AS TO
DEFENDANT DAVID SCOTT CACCHIONE

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19 The Securities and Exchange Commission having filed a Complaint and Defendant David
20 Scott Cacchione ("Cacchione" or "Defendant") having entered a general appearance; consented to the
21 Court's jurisdiction over Cacchione and the subject matter of this action; consented to entry of this
22 Final Judgment without admitting or denying the allegations of the Complaint (except as to
23 jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from
24 this Final Judgment:

25 I.

26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Cacchione and Cacchione's
27 agents, servants, employees, attorneys, and all persons in active concert or participation with them

1 who receive actual notice of this Final Judgment by personal service or otherwise are permanently
2 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities
3 Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated
4 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or
5 of the mails, or of any facility of any national securities exchange, in connection with the purchase or
6 sale of any security:

- 7 (a) to employ any device, scheme, or artifice to defraud;
- 8 (b) to make any untrue statement of a material fact or to omit to state a material fact
9 necessary in order to make the statements made, in the light of the circumstances
10 under which they were made, not misleading; or
- 11 (c) to engage in any act, practice, or course of business which operates or would operate
12 as a fraud or deceit upon any person.

13 II.

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

- 21 (a) to employ any device, scheme, or artifice to defraud;
- 22 (b) to obtain money or property by means of any untrue statement of a material fact or any
23 omission of a material fact necessary in order to make the statements made, in light of
24 the circumstances under which they were made, not misleading; or
- 25 (c) to engage in any transaction, practice, or course of business which operates or
26 would operate as a fraud or deceit upon the purchaser.

III.

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2 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall
3 pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to
4 Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15
5 U.S.C. § 78u(d)(3)]. The Court shall determine the amounts of the disgorgement and civil penalty
6 upon motion of the Commission. Prejudgment interest shall be calculated from April 1, 2006, based
7 on the rate of interest used by the Internal Revenue Service for the underpayment of federal income
8 tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for
9 disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be
10 precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint;
11 (b) Defendant may not challenge the validity of the Consent or this Final Judgment; (c) solely for the
12 purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by
13 the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits,
14 declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence,
15 without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules
16 of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil
17 penalties, the parties may take discovery, including discovery from appropriate non-parties.

IV.

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19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant
20 David Scott Cacchione to Entry of Final Judgment, filed concurrently, is incorporated in the Final
21 Judgment with the same force and effect as if fully set forth herein, and that Cacchione shall comply
22 with all of the undertakings and agreements set forth therein.

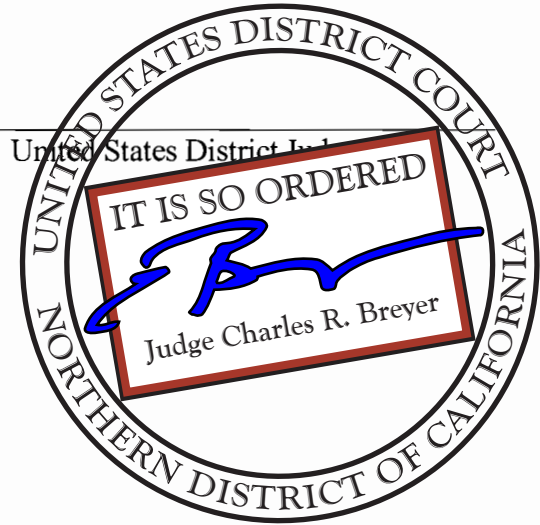
V.

23
24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
25 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.
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VI.

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.

Dated this 31 day of March, 2009



PRESENTED BY:

Kristin Snyder
Marc J. Fagel
Michael S. Dicke
Jina L. Choi
Kristin A. Snyder

Attorneys for Plaintiff Securities and Exchange Commission

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