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MAR 18 2002

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

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12 UNITED STATES SECURITIES AND
13 EXCHANGE COMMISSION,

14 Plaintiff,

15 vs.

16 PACIFIC GENESIS GROUP, INC., and
17 DAVID FITZGERALD,

18 Defendants.

Case No. C-00-4802 CRB

FINAL JUDGMENT OF PERMANENT
INJUNCTION AND OTHER RELIEF AS TO
DEFENDANT DAVID E. FITZGERALD

MAR 20 2002

ENTERED IN CIVIL DOCKET _____

19 Plaintiff Securities and Exchange Commission ("Commission") filed and served its complaint
20 upon Defendant David E. Fitzgerald ("Fitzgerald"). Subsequently, Fitzgerald answered an amended
21 complaint and admitted the jurisdiction of the Court over him and over the subject matter of this
22 action. The Court has previously conducted a trial of some of the claims asserted by the
23 Commission, made findings of fact and conclusions of law as to those claims, and entered a
24 Permanent Injunction And Other Relief Against Defendants David Fitzgerald and Pacific Genesis
25 Group, Inc. Fitzgerald has submitted a consent to entry of this Final Judgment, in which he waives
26 further trial on the merits and additional findings of fact and conclusions of law under Rule 52 of the
27 Federal Rules of Civil Procedure.

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FITZGERALD JUDGMENT
CASE NO. C-00-4802 CRB

1 The Court finds that it has jurisdiction to hear this matter and has personal jurisdiction over
2 Fitzgerald pursuant to Section 22(a) of the Securities Act of 1933 [15 U.S.C. § 77v] and Sections 21(e)
3 and 27 of the Securities Exchange Act of 1934 [15 U.S.C. §§78u(e) and 78aa].

4 NOW, THEREFORE.

5 I.

6 IT IS ORDERED, ADJUDGED AND DECREED that the defendant Fitzgerald and his
7 officers, agents, servants, employees, attorneys and all persons in active concert or participation with
8 them who receive actual notice of this order by personal service or otherwise, are permanently
9 restrained and enjoined from, directly or indirectly, by the use of any means or instrumentality of
10 interstate commerce, or of the mails or of any facility of any national securities exchange in
11 connection with the purchase or sale of any security:

12 (1) employing any device, scheme, or artifice to defraud;

13 (2) making any untrue statement of a material fact or omitting to state a material fact
14 necessary in order to make the statements made, in the light of the circumstances under
15 which they were made, not misleading; or

16 (3) engaging in any act, practice, or course of business which operates or would operate as a
17 fraud or deceit upon any person;

18 in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C.
19 §78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5].

20 II.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Fitzgerald and
22 his officers, agents, servants, employees, attorneys and all persons in active concert or participation
23 with them who receive actual notice of this order by personal service or otherwise, are permanently
24 restrained and enjoined from, directly or indirectly, in the offer or sale of the securities of any issuer,
25 by the use of any means or instruments of transportation or communication in interstate commerce or
26 by the use of the mails:

27 (1) employing any device, scheme, or artifice to defraud;

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1 (2) making any untrue statement of a material fact or omitting to state a material fact
2 necessary in order to make the statements made, in the light of the circumstances
3 under which they were made, not misleading; or

4 (3) engaging in any act, practice, or course of business which operates or would operate
5 as a fraud or deceit upon any person;

6 in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)].

7 III.

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Fitzgerald and
9 his officers, agents, servants, employees, attorneys and all persons in active concert or participation
10 with them who receive actual notice of this order by personal service or otherwise, are permanently
11 restrained and enjoined, pursuant to Section 15B(c)(2) of the Exchange Act [15 U.S.C. § 78o-4(c)(2)],
12 from use of the means or instruments of transportation or communication in interstate commerce or
13 of the mails, directly or indirectly, by the use of the means or instrumentalities of interstate
14 commerce, or of the mails, effect transactions in, or induce or attempt to induce the purchase or sale
15 of municipal securities in contravention of Rule G-17 of the Municipal Securities Regulation Board
16 which states: "In the conduct of its municipal securities activities, each broker, dealer, and municipal
17 securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or
18 unfair practice."

19 IV.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Fitzgerald shall pay
21 disgorgement in the amount of \$214,544, plus prejudgment interest in the amount of \$30,456, for a total
22 amount of \$245,000. Based upon Fitzgerald's sworn representations in his Statement of Financial
23 Condition executed on November 27, 2001, and submitted to the Commission ("Statement of Financial
24 Condition"), the parties have agreed and the Court orders that this amount shall be paid in installments.
25 Fitzgerald shall pay \$50,000 of this amount within 90 days of the entry of this Final Judgment, \$50,000
26 on or before the first year anniversary of the entry of this Final Judgment, \$100,000 on or before the
27 second year anniversary of this judgment and \$45,000 on or before the third year anniversary of this
28 judgment. Each such payment shall be: (A) made by United States postal money order, certified check,

1 bank cashier's check or bank money order; (B) made payable to the Securities and Exchange
2 Commission; (C) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission,
3 Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under
4 cover letter that identifies Fitzgerald as a defendant in this action, the file number of the action, a copy of
5 which cover letter and payment shall be sent to counsel for the Commission.

6 V.

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Fitzgerald shall pay a civil
8 money penalty of \$55,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and
9 Section 21(d)(3) of the Exchange Act [15 U.S.C. § 77u(d)]. Based upon Fitzgerald's Statement of
10 Financial Condition, the parties have agreed and the Court orders that payment of this amount is
11 deferred. Fitzgerald shall pay \$55,000 on or before the third year anniversary of the entry of this
12 judgment. The Commission's determination to permit payment of disgorgement, prejudgment interest
13 and civil money penalties on the schedule set forth above is contingent upon the accuracy and
14 completeness of his Statement of Financial Condition dated November 27, 2001, and other documents
15 submitted to the Commission. If at any time following the entry of this Final Judgment the Commission
16 obtains information indicating that Fitzgerald's representations to the Commission concerning his assets,
17 income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material
18 respect as of the time such representations were made, the Commission may, at its sole discretion and
19 without prior notice to Fitzgerald, petition the Court for an order requiring Fitzgerald to pay any unpaid
20 portion of the disgorgement, pre-judgment interest, civil money penalty and post-judgment interest
21 thereon immediately. In connection with any such petition, the only issue shall be whether the financial
22 information provided by Fitzgerald was fraudulent, misleading, inaccurate, or incomplete in any material
23 respect as of the time such representations were made. In any such petition, the Commission may move
24 the Court to consider all available remedies, including, but not limited to, ordering Fitzgerald to pay
25 funds or assets, directing the forfeiture of any assets, or sanctions for contempt of the Court's Final
26 Judgment, and the Commission may also request additional discovery. Fitzgerald may not, by way of
27 defense to such petition: (1) challenge the validity of his Consent or the Final Judgment; (2) contest the
28 allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-

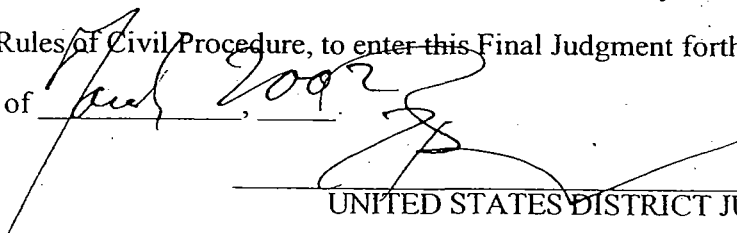
1 judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of
2 disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum
3 civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including,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

V.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain
6 jurisdiction over this action for all purposes, including implementation and enforcement of this
7 judgment.

8 There being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to
9 Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

10 Entered this 18 day of July, 2002.

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14 UNITED STATES DISTRICT JUDGE
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