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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *Robertson* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CHARLES ANTHONY FARRELL,
JAMES W. FARRELL, JAMES L.
ERICKSTEEN, GARY L. MOORE,
JILL HALL, and GUIDO BENSBERG,

Defendants

Civil Action No. 97CV1684H (POR)

**FINAL JUDGMENT AS TO
DEFENDANT JAMES W.
FARRELL**

Plaintiff SECURITIES AND EXCHANGE COMMISSION (the "COMMISSION"),
having duly commenced this action by filing its COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF (the "COMPLAINT"), and defendant JAMES W. FARRELL ("FARRELL"), in his
CONSENT AND UNDERTAKING OF JAMES W. FARRELL (the "CONSENT"), having
entered a general appearance herein, having admitted the jurisdiction of this Court over him and
over the subject matter of this action, and having waived the entry of findings of fact and
conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and, having
withdrawn his answer to the COMPLAINT without admitting or denying any of the allegations of
the COMPLAINT, except as to jurisdiction, which he admits, and without trial, argument or

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1 adjudication of any issue of fact or law, having consented to the entry of this FINAL JUDGMENT
2 AS TO JAMES W. FARRELL (the "FINAL JUDGMENT"), permanently restraining and
3 enjoining him from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15
4 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15
5 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder;
6 and ordering FARRELL to disgorge \$7,400 plus post judgment interest, and it further appearing
7 that this Court has jurisdiction over FARRELL and the subject matter hereof, and the Court being
8 fully advised in the premises:

9 **I.**

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that FARRELL, his
11 agents, employees, servants, attorneys-in-fact, and all those persons in active concert or
12 participation with them who receive actual notice of this FINAL JUDGMENT by personal service
13 or otherwise, and each of them, be and they hereby are permanently enjoined and restrained from
14 violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], by, directly or indirectly, using
15 any means or instrumentality of transportation or communication in interstate commerce, or the
16 mails, in the offer or sale of any security:

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

24 **II.**

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that FARRELL, his
26 agents, servants, employees, attorneys-in-fact, and all those persons in active concert or
27 participation with them who receive actual notice of this FINAL JUDGMENT by personal service
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1 or otherwise, and each of them, be and they hereby are permanently enjoined and restrained from
2 violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. §
3 240.10b-5] thereunder, by, directly or indirectly, using any means or instrumentality of interstate
4 commerce, or of the mails, or of any facility of any national securities exchange:

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

11 in connection with the purchase or sale of any security.

12 **III.**

13 **IT IS FURTHER ORDERED**, that FARRELL pay disgorgement in the amount of \$7,400
14 representing his gains from the conduct alleged in the COMPLAINT, plus post judgment interest at
15 the rate specified in 28 U.S.C. § 1961, which total shall be paid in fourteen monthly installments of
16 \$500 plus interest payable on, or before, the first of each month beginning on July 1, 1998, and
17 continuing through August, 1, 1999, and a final payment of \$400 plus interest due on September 1,
18 1999. Each monthly payment shall: (i) be made by postal money order, certified check, or cashier's
19 check, made payable to "Clerk, U.S. District Court for the Southern District of California"; (ii) bear
20 on its face the caption "SEC v. FERRACONE, et al."; (iii) be transmitted by certified mail (return
21 receipt requested) to Clerk of the Court, U.S. District Court for the Southern District of California,
22 U.S. Courthouse, 940 Front Street, San Diego, California 92189; and (iv) be made under cover of a
23 letter that identifies the defendant, the name and case number of this action, the name of this Court,
24 and the COMMISSION's file number (HO-2986). A copy of the cover letter and the check or
25 money order shall be transmitted simultaneously to counsel for the COMMISSION. If any
26 payment required by this paragraph is not received within fifteen days after the date on which such
27 payment is due, defendant FARRELL's entire outstanding balance shall immediately become due
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1 and payable and the COMMISSION may, at its sole discretion and without further notice to
2 defendant FARRELL, petition the Court for an order requiring the immediate payment of such
3 outstanding balance by defendant FARRELL. In connection with any such petition, the only issue
4 shall be whether defendant FARRELL's payment was made within fifteen days after it was due, and
5 defendant FARRELL may not, by way of defense to such petition, challenge the validity of the
6 CONSENT or this FINAL JUDGMENT. In any such petition, the COMMISSION may move the
7 Court to consider all available remedies, including, but not limited to, ordering defendant
8 FARRELL to pay funds or assets, directing the forfeiture of any assets, or imposing sanctions for
9 contempt of this Court's FINAL JUDGMENT, and the COMMISSION may also request additional
10 discovery.

11 **IV.**

12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Clerk shall place
13 all such funds received into the Registry of the Court in an interest-bearing passbook account. The
14 total amount of funds to be invested will be \$7,400, which total shall be paid by FARRELL
15 according to the payment schedule set forth in Paragraph III of this FINAL JUDGMENT. The
16 clerk shall begin placing the funds into the interest bearing passbook account upon receipt of the
17 *first monthly installment, which is due on or before July 1, 1998, and shall continue to place the*
18 funds received into the account until such time as the Court directs that all of the funds be
19 disbursed. The clerk shall deduct ten percent (10%) from the income earned on the investment as
20 authorized by the Judicial Conference of the United States and set by the Director of the
21 Administrative Office, whenever such income becomes available for deduction in the investment
22 and without further order of the court. After such time as said monies are paid into the Court, the
23 COMMISSION may propose a plan of distribution of the disgorged monies, which plan shall be
24 subject to Court approval, or may request that the monies be paid to the United States Treasury.

25 **V.**

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that based upon
27 FARRELL's sworn representations to the COMMISSION in his Statement of Financial Condition
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1 dated March, 25, 1998, and submitted to the Commission, the Court is not ordering FARRELL to
2 pay a civil penalty pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)]
3 and Section 21(d)(3) of the Securities Exchange Act of 1934 [[15 U.S.C. § 78u(d)(3)]. The
4 determination not to impose a civil penalty is contingent upon the accuracy and completeness of
5 FARRELL's Statement of Financial Condition. If at any time following entry of this FINAL
6 JUDGMENT, the COMMISSION obtains information indicating that FARRELL's representations
7 to the COMMISSION concerning his assets, income, liabilities, or net worth were fraudulent,
8 misleading, inaccurate or incomplete in any material respect as of the time such representations
9 were made, the COMMISSION may, at its sole discretion and without prior notice to FARRELL,
10 petition this Court for an order imposing a civil penalty. In connection with any such petition, the
11 only issues shall be whether the financial information provided by FARRELL was fraudulent,
12 misleading, inaccurate or incomplete in any material respect as of the time such representations
13 were made, and the amount of the civil penalty to be imposed. In its petition, the COMMISSION
14 may move this Court to consider all available remedies, including, but not limited to, ordering
15 FARRELL to pay funds or assets, directing the forfeiture of any assets, or imposing sanctions for
16 contempt of this Court's FINAL JUDGMENT, and the COMMISSION may also request additional
17 discovery. FARRELL may not, by way of defense to such petition, challenge the validity of his
18 CONSENT or this FINAL JUDGMENT, contest the allegations in the COMPLAINT, or assert that
19 payment of a civil penalty should not be ordered.

20 VI.

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the annexed
22 CONSENT be, and the same hereby is, incorporated herein by reference with the same force and
23 effect as if fully set forth herein.

24 VII.

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that in accordance with
26 the provisions of 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73, United States
27 Magistrate Judge Porter may conduct any proceedings necessary regarding the collection of the
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1 monies Defendant FARRELL is required to disgorge under this FINAL JUDGMENT. United
2 States District Judge Huff shall retain jurisdiction over the enforcement of all other terms of this
3 FINAL JUDGMENT.

4 **VIII.**

5 **IT IS FURTHER ORDERED** that counsel presenting this order personally serve a copy
6 thereof on the clerk or the chief deputy. Absent the aforesaid service, the clerk is hereby relieved of
7 any personal liability relative to compliance with this order.

8 **IX.**

9 There being no just cause for delay, the Clerk of the Court is hereby directed, pursuant to
10 Rule 54(b) of the Federal Rules of Civil Procedure, to enter this FINAL JUDGMENT forthwith.

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13 Marilyn L. Huff
14 UNITED STATES DISTRICT JUDGE

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16 DATED: 6/18/98