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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 **SECURITIES AND EXCHANGE**
14 **COMMISSION,**
15 **Plaintiff,**
16 **v.**
17 **DANIEL CALUGAR and SECURITY**
18 **BROKERAGE, INC.,**
19 **Defendants.**

20 Case No. CV-S-03-1600-RCJ-RJJ

21 **FINAL JUDGMENT**
22 **OF PERMANENT INJUNCTION**
23 **AND OTHER RELIEF AGAINST**
24 **DANIEL CALUGAR AND**
25 **SECURITY BROKERAGE, INC.**

26 Plaintiff Securities and Exchange Commission (“Commission”) having filed
27 and served upon Defendants Daniel Calugar (“Calugar”) and Security Brokerage,
28 Inc. (“SBI”) a Summons and Complaint (“Complaint”) and Calugar and SBI
having entered a general appearance; consented to the Court’s jurisdiction over
them and over the subject matter of this action; consented to the entry of this Final
Judgment Of Permanent Injunction And Other Relief Against Daniel Calugar And
Security Brokerage, Inc. (“Final Judgment”) without admitting or denying the
allegations of the Complaint (except as to jurisdiction); waived findings of fact
and conclusions of law; and waived any right to appeal from this Final Judgment;
and Calugar having paid \$72 million of the \$175 million in profits received from
trades self-cleared through SBI to an escrow account (“Settlement Fund”)

1 established to settle claims in the class action entitled *In re Mutual Funds*
2 *Investment Litigation*, 04 MD 15861, 62, 63 and 64 (D. Md.) (the “MDL
3 Proceedings”), which Settlement Fund is to be administered as a Qualified
4 Settlement Fund as described in Treas. Reg. § 1.468B:

5 **I.**

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Calugar,
7 SBI, and their officers, agents, servants, employees, attorneys, and all persons in
8 active concert or participation with them who receive actual notice of this Final
9 Judgment by personal service or otherwise are permanently restrained and
10 enjoined from violating Section 17(a) of the Securities Act of 1933 (“Securities
11 Act”), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any
12 means or instruments of transportation or communication in interstate commerce
13 or by use of the mails, directly or indirectly:

- 14 A. to employ any device, scheme, or artifice to defraud;
- 15 B. to obtain money or property by means of any untrue statement of a
16 material fact or any omission of a material fact necessary in order to
17 make the statements made, in light of the circumstances under which
18 they were made, not misleading; or
- 19 C. to engage in any transaction, practice, or course of business which
20 operates or would operate as a fraud or deceit upon the purchaser.

21 **II.**

22 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Calugar,
23 SBI, and their officers, agents, servants, employees, attorneys, and all persons in
24 active concert or participation with them who receive actual notice of this Final
25 Judgment by personal service or otherwise are permanently restrained and
26 enjoined from violating, directly or indirectly, Section 10(b) of the Securities
27 Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5
28 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or

1 instrumentality of interstate commerce, or of the mails, or of any facility of any
2 national securities exchange, in connection with the purchase or sale of any
3 security:

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

11 **III.**

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Calugar
13 shall pay \$103 million in order to disgorge the remaining profits received from
14 trades self-cleared through SBI and pay a \$50 million civil penalty pursuant to
15 Section 20(d) of the Securities Act, 15 U.S.C. §77t(d), and Section 21(d)(3) of the
16 Exchange Act, 15 U.S.C. § 78u(d)(3). The disgorgement and penalty obligations
17 shall be satisfied by payment of \$153 million (“the Fund”), presently escrowed in
18 account no. 25D052008768 at Citibank, to the Clerk of the Court for deposit into
19 the Registry Account of this Court within ten days of entry of this Final Judgment.
20 Calugar and his attorneys shall execute all documents required by the escrow
21 agreement entered into with Citibank and by Local Rule 67-1 to make the deposit
22 with the Clerk, including the Certificate of Cash Deposit required by Local Rule
23 67-1(a). Calugar relinquishes all legal and equitable right, title, and interest in the
24 Fund and no part of these funds shall be returned to Calugar. The Commission
25 may by motion propose a plan to distribute the Fund subject to the Court’s
26 approval. Such a plan may provide that the Fund shall be distributed pursuant to
27 the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.
28 Regardless of whether any such Fair Fund distribution is made, amounts ordered

1 to be paid as civil penalties pursuant to this Final Judgment shall be treated as
2 penalties paid to the government for all purposes, including all tax purposes. To
3 preserve the deterrent effect of the civil penalty, Calugar shall not, after offset or
4 reduction of any award of compensatory damages in any Related Investor Action
5 based on Calugar's payment of disgorgement in this action, argue that he is
6 entitled to, nor shall he further benefit by, offset or reduction of such
7 compensatory damages award by the amount of any part of Calugar's payment of a
8 civil penalty in this action ("Penalty Offset"). If the court in any Related Investor
9 Action grants such a Penalty Offset, Calugar shall, within 30 days after entry of a
10 final order granting the Penalty Offset, notify the Commission's counsel in this
11 action and pay the amount of the Penalty Offset to the United States Treasury or to
12 a Fair Fund, as the Commission directs. Such a payment shall not be deemed an
13 additional civil penalty and shall not be deemed to change the amount of the civil
14 penalty imposed in this Final Judgment. For purposes of this paragraph, a
15 "Related Investor Action" means a private damages action brought against
16 Calugar by or on behalf of one or more investors based on substantially the same
17 facts as alleged in the Complaint in this action, and includes the MDL
18 Proceedings.

19 IV.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
21 Preliminary Injunction Order: (1) Freezing Assets; And (2) Prohibiting The
22 Destruction Of Documents, entered December 15, 2004, as subsequently modified,
23 is vacated and all frozen assets shall be released and unfrozen, with the exception
24 of the Fund, which shall remain deposited with the Clerk until further order of the
25 Court.

26 V.

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
28 Consents are incorporated herein with the same force and effect as if fully set forth

1 herein, and that the Defendants shall comply with all of the undertakings and
2 agreements set forth therein.

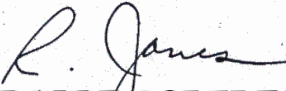
3 **VI.**

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this
5 Court shall retain jurisdiction of this matter for the purposes of enforcing the terms
6 of this Final Judgment.

7 **VII.**

8 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
9 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment
10 forthwith and without further notice.

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12 DATED: January 12, 2006

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15 HONORABLE ROBERT C. JONES
16 UNITED STATES DISTRICT JUDGE
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