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DEC 21 1995

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

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IN THE UNITED STATES DISTRICT COURT

12 **DEC 11 1995**

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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

15 SECURITIES AND EXCHANGE COMMISSION,

16 Plaintiff,

17 v.

CIVIL ACTION NO. _____

18 NABEEH I. TOTAH,

19
20 Defendant.

21
22 **FINAL JUDGMENT OF**
23 **PERMANENT INJUNCTION**
AS TO NABEEH I. TOTAH

24 Plaintiff Securities and Exchange Commission (the
25 "Commission") having filed its Complaint for Injunction and Other
26 Relief ("Complaint"), and defendant Nabeeh I. Totah ("Totah") in

27 **FINAL JUDGMENT OF**
28 **PERMANENT INJUNCTION**

1 his Consent of Nabeeh I. Totah ("Consent"), filed simultaneously
2 with this Final Judgment of Permanent Injunction as to Nabeeh I.
3 Totah ("Final Judgment") and incorporated herein by reference,
4 having acknowledged service, having entered a general appearance,
5 having admitted the Court's jurisdiction over him and over the
6 subject matter of this action, having waived service of process,
7 having waived filing of an answer, having waived the entry of
8 findings of fact and conclusions of law pursuant to Rule 52 of the
9 Federal Rules of Civil Procedure and, without admitting or denying
10 any of the allegations of the Complaint, except as to jurisdiction,
11 which he admits, having consented to the entry of this Final
12 Judgment, and it further appearing that this Court has jurisdiction
13 over Totah and the subject matter hereof, and the Court being fully
14 advised in the premises:

15 I.

16 IT IS HEREBY ORDERED that Nabeeh I. Totah, his agents,
17 servants, employees, attorneys-in-fact, and those persons in active
18 concert or participation with him who receive actual notice of this
19 Final Judgment by personal service or otherwise, and each of them,
20 are permanently enjoined and restrained from violating, directly
21 or indirectly, by use of the means or instrumentalities of
22 interstate commerce, the mails, or any facility of any national
23 securities exchange:

1 (a) Section 10(b) of the Securities Exchange Act of 1934 [15
2 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder
3 [17 C.F.R. § 240.10b-5] by (1) employing any device,
4 scheme or artifice to defraud, (2) making any untrue
5 statement of a material fact or omitting to state a
6 material fact necessary in order to make the statements
7 made, in the light of the circumstances under which they
8 were made, not misleading, or (3) engaging in any act,
9 practice, or course of business which operates or would
10 operate as a fraud or deceit upon any person, in
11 connection with the purchase or sale of any security; and

12 (b) Section 14(e) of the Securities Exchange Act of 1934 [15
13 U.S.C. § 78n(e)] and Rule 14e-3 promulgated thereunder
14 [17 C.F.R. § 240.14e-3] by

15 (1) trading in the securities sought or to be sought in
16 a tender offer while in possession of material
17 information relating to said tender offer which the
18 defendant knows or has reason to know is nonpublic
19 and has been acquired, directly or indirectly, from
20 the offering person, the issuer of the securities
21 sought or to be sought by such tender offer, or any
22 officer, director, partner, employee, or other
23 person acting on behalf of the offering person or
24 such issuer, without disclosing a reasonable time
25 prior to trading such information and its source;
26 or

1 (2) communicating material information relating to a
2 tender offer, which information the defendant knows
3 or has reason to know is nonpublic and knows or has
4 reason to know was acquired, directly or indirectly,
5 from the offering person, the issuer of the
6 securities sought or to be sought by such tender
7 offer, or any officer, director, partner, employee,
8 or other person acting on behalf of the offering
9 person or such issuer, to any other person under
10 circumstances in which it is reasonably foreseeable
11 that such communication is likely to result in
12 violation of Rule 14e-3 [17 C.F.R. § 240.14e-3]
13 promulgated under the Securities Exchange Act of
14 1934.

15 II.

16 IT IS FURTHER ORDERED that Nabeeh I. Totah disgorge: (a)
17 \$107,712.50, representing profits from the transactions complained
18 of, and (b) \$6,870.24, representing prejudgment interest thereon.

19 III.

20 IT IS FURTHER ORDERED that monies paid pursuant to Section
21 II., above, of this Final Judgment shall be paid within 10 days of
22 entry of this Final Judgment in the following manner:

23 (a) such monies shall be paid into this Court's registry by
24 certified check or money order drawn to the order of
25 "Clerk, United States District Court, Northern District
26 of California," whereupon the Clerk of this Court, or the
27

1 Financial Deputy Clerk, is hereby directed to deposit
2 said certified check or money order into an interest
3 bearing account (the "Account") with the Court Registry
4 Investment System ("CRIS");

5 (b) simultaneously with payment, Totah shall send copies of
6 any certified checks or money orders to Daniel A. Nathan,
7 Assistant Director, Division of Enforcement, Securities
8 and Exchange Commission, 450 Fifth Street, N.W., Mail
9 Stop 4-4, Washington, D.C. 20549, under cover letter
10 identifying Nabeeh I. Totah as the defendant in this
11 action, the case number of the action, the name of the
12 Court, and the Commission's file number (HO-3004);

13 (c) the Account shall be held by the CRIS until further order
14 of the Court, and distributed pursuant to a Court-
15 approved plan to be proposed by the Commission, but in
16 no event shall the monies disgorged revert, directly or
17 indirectly, to Nabeeh I. Totah, or his heirs or assigns;

18 (d) interest earned on the Account shall be credited to the
19 Account and shall thereafter be treated in the same
20 manner as principal; and

21 (e) the Clerk of the Court is directed to deduct from the
22 income earned on the investment a fee, not exceeding that
23 authorized by the Judicial Conference of the United
24 States and set by the Director of the Administrative
25 Office at or equal to 10% of the income earned in the
26

1 investment so held and without further order of the
2 Court.

3 IV.

4 IT IS FURTHER ORDERED that Nabeeh I. Totah pay a \$25,000 civil
5 penalty pursuant to Section 21A(a) of the Exchange Act [15 U.S.C.
6 § 78u-1(a)] within 10 days of entry of this Final Judgment (a) by
7 United States money order, certified check, bank cashier's check
8 or bank money order, (b) made payable to the Securities and
9 Exchange Commission, (c) mailed by certified mail (return receipt
10 requested) to the Comptroller, Securities and Exchange Commission,
11 450 Fifth Street, N.W., Mail Stop 2-5, Washington, D.C. 20549, and
12 (d) submitted under cover letter identifying Nabeeh I. Totah as the
13 defendant in this action, the case number of this action, the name
14 of the Court, and the Commission's file number (HO-3004), a copy
15 of which cover letter and proof of payment shall be sent to Daniel
16 A. Nathan, Assistant Director, Division of Enforcement, Securities
17 and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 4-4,
18 Washington, D.C. 20549.

19 V.

20 IT IS FURTHER ORDERED that the Consent be, and hereby is,
21 incorporated herein with the same force and effect as if fully set
22 forth herein, and that Totah shall comply with all of the
23 undertakings and agreements incorporated herein.

24 VI.

25 IT IS FURTHER ORDERED that this Court shall retain
26 jurisdiction for the purpose of enforcing the Final Judgment.

27 **FINAL JUDGMENT OF**
28 **PERMANENT INJUNCTION**

VII.

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

Ronald M. Whyte
United States District Judge

DATED: 12/21/95