

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

DOUGLAS V. DECINCES, JOSEPH  
J. DONOHUE, FRED SCOTT  
JACKSON, and ROGER A.  
WITTENBACH,

Defendants.

Case No. SACV11-1168DOC (ANx)

**FINAL JUDGMENT AS TO  
JOSEPH J. DONOHUE**

The Securities and Exchange Commission having filed a Complaint and Defendant Joseph J. Donohue (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this 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:

**I.**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of

1 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated  
2 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of  
3 interstate commerce, or of the mails, or of any facility of any national securities  
4 exchange, in connection with the purchase or sale of any security:

6 (a) to employ any device, scheme, or artifice to defraud;

7 (b) to make any untrue statement of a material fact or to omit to state a  
8 material fact necessary in order to make the statements made, in the  
9 light of the circumstances under which they were made, not misleading;

11 or

12 (c) to engage in any act, practice, or course of business which operates or  
13 would operate as a fraud or deceit upon any person.  
14

15 **II.**

16  
17 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
18 Defendant and Defendant’s agents, servants, employees, attorneys, and all persons in  
19 active concert or participation with them who receive actual notice of this Final  
20 Judgment by personal service or otherwise are permanently restrained and enjoined  
21 from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule  
22 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any  
23 tender offer or request or invitation for tenders, from engaging in any fraudulent,  
24 deceptive, or manipulative act or practice, by:  
25  
26  
27  
28

1 (a) purchasing or selling or causing to be purchased or sold the  
2 securities sought or to be sought in such tender offer, securities  
3 convertible into or exchangeable for any such securities or any  
4 option or right to obtain or dispose of any of the foregoing  
5 securities while in possession of material information relating to  
6 such tender offer that Defendant knows or has reason to know is  
7 nonpublic and knows or has reason to know has been acquired  
8 directly or indirectly from the offering person; the issuer of the  
9 securities sought or to be sought by such tender offer; or any  
10 officer, director, partner, employee or other person acting on  
11 behalf of the offering person or such issuer, unless within a  
12 reasonable time prior to any such purchase or sale such  
13 information and its source are publicly disclosed by press release  
14 or otherwise; or

15  
16  
17  
18  
19 (b) communicating material, nonpublic information relating to a  
20 tender offer, which Defendant knows or has reason to know is  
21 nonpublic and knows or has reason to know has been acquired  
22 directly or indirectly from the offering person; the issuer of the  
23 securities sought or to be sought by such tender offer; or any  
24 officer, director, partner, employee, advisor, or other person  
25 acting on behalf of the offering person or such issuer, to any  
26  
27  
28

1 person under circumstances in which it is reasonably foreseeable  
2 that such communication is likely to result in the purchase or sale  
3 of securities in the manner described in subparagraph (a) above,  
4 except that this paragraph shall not apply to a communication  
5 made in good faith  
6

7 (i) to the officers, directors, partners or employees of the  
8 offering person, to its advisors or to other persons,  
9 involved in the planning, financing, preparation or  
10 execution of such tender offer;  
11

12 (ii) to the issuer whose securities are sought or to be sought by  
13 such tender offer, to its officers, directors, partners,  
14 employees or advisors or to other persons involved in the  
15 planning, financing, preparation or execution of the  
16 activities of the issuer with respect to such tender offer; or  
17

18 (iii) to any person pursuant to a requirement of any statute or  
19 rule or regulation promulgated thereunder.  
20  
21

### 22 **III.**

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
24 is liable for disgorgement of \$75,570, representing profits gained as a result of the  
25 conduct alleged in the Complaint, and a civil penalty in the amount of \$37,785  
26 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall  
27  
28

1 satisfy this obligation by paying \$113,355 within 14 days after entry of this Final  
2 Judgment by certified check, bank cashier's check, or United States postal money  
3 order payable to the Securities and Exchange Commission. The payment shall be  
4 delivered or mailed to the Securities and Exchange Commission, Office of Financial  
5 Management, 100 F. Street, NE, Stop 6042, Washington, D.C. 20549, and shall be  
6 accompanied by a letter identifying Joseph J. Donohue as a defendant in this action;  
7  
8 setting forth the title and civil action number of this action and the name of this  
9 Court; and specifying that payment is made pursuant to this Final Judgment.  
10 Defendant shall pay post-judgment interest on any delinquent amounts pursuant to  
11 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this  
12 paragraph to the United States Treasury.  
13  
14

#### 15 IV.

16 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND  
17 DECREED that based on Defendant's agreement to cooperate in a Commission  
18 investigation and/or related enforcement action, the Court is not ordering Defendant  
19 to pay prejudgment interest or a civil penalty in excess of \$37,785. If at any time  
20 following the entry of the Final Judgment the Commission obtains information  
21 indicating that Defendant knowingly provided materially false or misleading  
22 information or materials to the Commission or in a related proceeding, the  
23 Commission may, at its sole discretion and without prior notice to the Defendant,  
24 petition the Court for an order requiring Defendant to pay prejudgment interest and  
25  
26  
27  
28

1 pay an additional civil penalty. In connection with any such petition and at any  
2 hearing held on such a motion: (a) Defendant will be precluded from arguing that  
3 he did not violate the federal securities laws as alleged in the Complaint; (b)  
4 Defendant may not challenge the validity of the Judgment, this Consent, or any  
5 related Undertakings; (c) the allegations of the Complaint, solely for the purposes of  
6 such motion, shall be accepted as and deemed true by the Court; and (d) the Court  
7 may determine the issues raised in the motion on the basis of affidavits, declarations,  
8 excerpts of sworn deposition or investigative testimony, and documentary evidence  
9 without regard to the standards for summary judgment contained in Rule 56(c) of the  
10 Federal Rules of Civil Procedure. Under these circumstances, the parties may take  
11 discovery, including discovery from appropriate non-parties.  
12  
13  
14  
15

16 **V.**

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the  
18 Consent is incorporated herein with the same force and effect as if fully set forth  
19 herein, and that Defendant shall comply with all of the undertakings and agreements  
20 set forth therein.  
21  
22  
23  
24  
25  
26  
27  
28

VI.

1  
2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court  
3 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this  
4 Final Judgment.  
5

6  
7 Dated: August 9, 2011  
8

9  
10   
11 \_\_\_\_\_  
12 DAVID O. CARTER, U.S. DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28