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NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

MHP

13 SECURITIES AND EXCHANGE COMMISSION
14 Plaintiff,
15 v.
16 JOSEPH N. AZAR,
17 Defendant.

CV 09

1881

~~PROPOSED~~
FINAL JUDGMENT

18
19 The Securities and Exchange Commission having filed a Complaint and Defendant
20 Joseph N. Azar having entered a general appearance; consented to the Court's jurisdiction over
21 Defendant and the subject matter of this action; consented to entry of this Final Judgment
22 without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived
23 findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

24 I.

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
26 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
27 participation with them who receive actual notice of this Final Judgment by personal service or
28 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

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

- 5 (a) to employ any device, scheme, or artifice to defraud;
- 6 (b) 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 the light of the circumstances
8 under which they were made, not misleading; or
- 9 (c) to engage in any act, practice, or course of business which operates or would
10 operate as a fraud or deceit upon any person.

11 II.

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

- 19 (a) purchasing or selling or causing to be purchased or sold the securities sought or to
20 be sought in such tender offer, securities convertible into or exchangeable for any
21 such securities or any option or right to obtain or dispose of any of the foregoing
22 securities while in possession of material information relating to such tender offer
23 that Defendant knows or has reason to know is nonpublic and knows or has
24 reason to know has been acquired directly or indirectly from the offering person;
25 the issuer of the securities sought or to be sought by such tender offer; or any
26 officer, director, partner, employee or other person acting on behalf of the
27 offering person of such issuer, unless within a reasonable time prior to any such
28

- 1 purchase or sale such information and its source are publicly disclosed by press
2 release or otherwise; or
- 3 (b) communicating material, nonpublic information relating to a tender offer, which
4 Defendant knows or has reason to know is nonpublic and knows or has reason to
5 know has been acquired directly or indirectly from the offering person; the issuer
6 of the securities sought or to be sought by such tender offer; or any officer,
7 director, partner, employee, advisor, or other person acting on behalf of the
8 offering person of such issuer, to any person under circumstances in which it is
9 reasonably foreseeable that such communication is likely to result in the purchase
10 or sale of securities in the manner described in subparagraph (a) above, except
11 that this paragraph shall not apply to a communication made in good faith
- 12 (i) to the officers, directors, partners or employees of the offering person, to
13 its advisors or to other persons, involved in the planning, financing,
14 preparation or execution of such tender offer;
- 15 (ii) to the issuer whose securities are sought or to be sought by such tender
16 offer, to its officers, directors, partners, employees or advisors or to other
17 persons involved in the planning, financing, preparation or execution of
18 the activities of the issuer with respect to such tender offer; or
- 19 (iii) to any person pursuant to a requirement of any statute or rule or regulation
20 promulgated thereunder.

21 III.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable
23 for disgorgement of \$126,998.21, representing profits gained as a result of the conduct alleged in
24 the Complaint, together with prejudgment interest thereon in the amount of \$17,702.41, and a
25 civil penalty in the amount of \$126,998.21 pursuant to Section 21A of the Exchange Act [15
26 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$271,698.83 within 10
27 business days after entry of this Final Judgment by certified check, bank cashier's check, or
28 United States postal money order payable to the Securities and Exchange Commission. The

1 payment shall be delivered or mailed to the Office of Financial Management, Securities and
2 Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3,
3 Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Joseph N. Azar as a
4 defendant in this action; setting forth the title and civil action number of this action and the name
5 of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant
6 shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The
7 Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

8 IV.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
10 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant
11 shall comply with all of the undertakings and agreements set forth therein.

12 V.

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

15
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17 Dated: May 5, 2009

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20 Approved as to form:

21 
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27 ATTORNEY FOR DEFENDANT JOSEPH N. AZAR
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