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6 Attorneys for Plaintiff
 7 SECURITIES AND EXCHANGE COMMISSION
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 8 San Francisco, California 94104
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 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14
 15 SECURITIES AND EXCHANGE COMMISSION,
 16 Plaintiff,
 17 v.
 18 ARNOLD A. MCCLELLAN and
 ANNABEL MCCLELLAN
 19 Defendants.

Case No. 10-CV-05412 WHA

CONSENT OF DEFENDANT
 ANNABEL MCCLELLAN TO ENTRY
 OF FINAL JUDGMENT

20
 21 1. Defendant Annabel McClellan (“Defendant”) acknowledges having been served
 22 with the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction
 23 over Defendant and over the subject matter of this action.

24 2. Without admitting or denying the allegations of the complaint (except as to
 25 personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to
 26 the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and
 27 incorporated by reference herein, which, among other things:
 28

1 (a) permanently restrains and enjoins Defendant from violation of Section 10(b) of
2 the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b)] and
3 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and

4 (b) orders Defendant to pay a civil penalty in the amount of \$1,000,000 under Section
5 21A of the Exchange Act [15 U.S.C. § 78u-1], such penalty payable in three
6 installments as described below and as reduced by any criminal fine paid by the
7 Defendant as described below.

8 3. The Defendant agrees to pay a civil penalty in installments as follows:

9 (1) \$250,000 payable within 10 days of the entry of a final judgment in this action; (2) \$250,000
10 payable within 180 days of the entry of final judgment; and (3) \$500,000 payable within 360
11 days of the entry of final judgment. The civil penalty amount shall be reduced by the amount of
12 any criminal fine paid by the Defendant in the criminal action U.S. v. Annabel McClellan, Case
13 No. 10- CR-0860 WHA (N.D. Cal., filed Nov. 24, 2010), and any such reduction shall be applied
14 to any installment due after payment of the criminal fine.

15 4. Defendant agrees that she shall not seek or accept, directly or indirectly,
16 reimbursement or indemnification from any source, including but not limited to payment made
17 pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays
18 pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof
19 are added to a distribution fund or otherwise used for the benefit of investors. Defendant further
20 agrees that she shall not claim, assert, or apply for a tax deduction or tax credit with regard to
21 any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final
22 Judgment, regardless of whether such penalty amounts or any part thereof are added to a
23 distribution fund or otherwise used for the benefit of investors.

24 5. Defendant waives the entry of findings of fact and conclusions of law pursuant to
25 Rule 52 of the Federal Rules of Civil Procedure.

26 6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of
27 the Final Judgment.

1 7. Defendant enters into this Consent voluntarily and represents that no threats,
2 offers, promises, or inducements of any kind have been made by the Commission or any
3 member, officer, employee, agent, or representative of the Commission to induce Defendant to
4 enter into this Consent.

5 8. Defendant agrees that this Consent shall be incorporated into the Final Judgment
6 with the same force and effect as if fully set forth therein.

7 9. Defendant will not oppose the enforcement of the Final Judgment on the ground,
8 if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and
9 hereby waives any objection based thereon.

10 10. Defendant waives service of the Final Judgment and agrees that entry of the Final
11 Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant
12 of its terms and conditions. Defendant further agrees to provide counsel for the Commission,
13 within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit
14 or declaration stating that Defendant has received and read a copy of the Final Judgment.

15 11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted
16 against Defendant in this civil proceeding. Defendant acknowledges that no promise or
17 representation has been made by the Commission or any member, officer, employee, agent, or
18 representative of the Commission with regard to any criminal liability that may have arisen or
19 may arise from the facts underlying this action or immunity from any such criminal liability.
20 Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding,
21 including the imposition of any remedy or civil penalty herein. Defendant further acknowledges
22 that the Court's entry of a permanent injunction may have collateral consequences under federal
23 or state law and the rules and regulations of self-regulatory organizations, licensing boards, and
24 other regulatory organizations. Such collateral consequences include, but are not limited to, a
25 statutory disqualification with respect to membership or participation in, or association with a
26 member of, a self-regulatory organization. This statutory disqualification has consequences that
27 are separate from any sanction imposed in an administrative proceeding. In addition, in any
28 disciplinary proceeding before the Commission based on the entry of the injunction in this

1 action, Defendant understands that she shall not be permitted to contest the factual allegations of
2 the complaint in this action.

3 12. Defendant understands and agrees to comply with the Commission's policy "not
4 to permit a defendant or respondent to consent to a judgment or order that imposes a sanction
5 while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In
6 compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to
7 be made any public statement denying, directly or indirectly, any allegation in the complaint or
8 creating the impression that the complaint is without factual basis; and (ii) that upon the filing of
9 this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they
10 deny any allegation in the complaint. If Defendant breaches this agreement, the Commission
11 may petition the Court to vacate the Final Judgment and restore this action to its active docket.
12 Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take
13 legal or factual positions in litigation or other legal proceedings in which the Commission is not
14 a party.

15 13. Defendant hereby waives any rights under the Equal Access to Justice Act, the
16 Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to
17 seek from the United States, or any agency, or any official of the United States acting in his or
18 her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees,
19 expenses, or costs expended by Defendant to defend against this action. For these purposes,
20 Defendant agrees that Defendant is not the prevailing party in this action since the parties have
21 reached a good faith settlement.

22 14. Defendant agrees that this Court shall retain jurisdiction over this matter for the
23 purpose of enforcing the terms of the Final Judgment.

24
25
26 Dated: August 16th, 2011


Annabel McClellan

ACKNOWLEDGMENT

State of California
County of SAN FRANCISCO

On AUG. 16, 2011 before me, ABIGAIL F.L. CHIN personally appeared ANNABEL MCCLELLAN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in his authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary
Signature [Handwritten Signature]

Approved as to form:

[Handwritten Signature]
Nicole Howell Neubert
Clarence, Dyer & Cohen LLP
899 Ellis Street
San Francisco, CA 94109
(415) 749-1800
Attorneys for Defendant Annabel McClellan

Attachment

1 MARC J. FAGEL (Cal. Bar No. 154425)
2 MICHAEL S. DICKE (Cal. Bar No. 158187)
3 ROBERT TASHJIAN (Cal. Bar No. 191007)
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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 SECURITIES AND EXCHANGE COMMISSION,
19 Plaintiff,
20 v.
21 ARNOLD A. MCCLELLAN and
22 ANNABEL MCCLELLAN
23 Defendants.

Case No. 10-CV-05412 WHA

FINAL JUDGMENT AS TO
DEFENDANT ANNABEL
MCCLELLAN

24 The Securities and Exchange Commission having filed a Complaint and Defendant
25 Annabel McClellan having entered a general appearance; consented to the Court's jurisdiction
26 over Defendant and the subject matter of this action; consented to entry of this Final Judgment
27 without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived
28 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 Annabel
McClellan and Defendant's agents, servants, employees, attorneys, and all persons in active

1 concert or participation with them who receive actual notice of this Final Judgment by personal
2 service or otherwise are permanently restrained and enjoined from violating, directly or
3 indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15
4 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any
5 means or instrumentality of interstate commerce, or of the mails, or of any facility of any
6 national securities exchange, in connection with the purchase or sale of any security:

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

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

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

13 II.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a
15 civil penalty in the amount of \$1,000,000 pursuant to Section 21A of the Exchange Act [15
16 U.S.C. § 78u-1]. Defendant shall make this payment pursuant to the terms of the payment
17 schedule set forth in paragraph III below. The civil penalty amount shall be reduced by any
18 criminal fine paid by the Defendant in the criminal action *United States v. Annabel McClellan*,
19 Case No. CR-10-0860 WHA (N.D. Cal., filed Nov. 24, 2010). Defendant shall make payments
20 by certified check, bank cashier’s check, or United States postal money order payable to the
21 Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of
22 Financial Management, Securities and Exchange Commission, 100 F Street, NE, Stop 6042,
23 Washington DC 20549, and shall be accompanied by a letter identifying Annabel McClellan as a
24 defendant in this action; setting forth the title and civil action number of this action and the name
25 of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant
26 shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The
27 Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.
28

1 III.

2 Defendant Annabel McClellan shall pay \$1,000,000 in three installments according to
3 the following schedule: (1) \$250,000, paid within 10 days of entry of this Final Judgment;
4 (2) \$250,000, paid within 180 days of entry of this Final Judgment; and (3) \$500,000, paid
5 within 360 days of entry of this Final Judgment. The civil penalty amount shall be reduced by
6 the amount of any criminal fine paid by the Defendant in the criminal action U.S. v. Annabel
7 McClellan, Case No. 10- CR-0860 WHA (N.D. Cal., filed Nov. 24, 2010), and any such
8 reduction shall be applied to any installment due after payment of the criminal fine.

9 If Annabel McClellan fails to make any payment by the date agreed or in the amount
10 agreed according to the schedule set forth above, all outstanding payments under this Final
11 Judgment, including post-judgment interest, minus any payments made, shall become due and
12 payable immediately without further application to the Court.

13 IV.

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

17 V.

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

20 VI.

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

23
24
25 Dated:

26 _____
Honorable William Alsup
United States District Judge

1 Approved as to form:

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/s/ Nanci Clarence

3

Nanci Clarence

4

Nicole Howell Neubert

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5

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6

Tel.: (415) 749-1800

Attorneys for Defendant

7

ANNABEL McCLELLAN

8

Submitted by:

9

/s/ Robert L. Tashjian

10

Robert L. Tashjian

SECURITIES AND EXCHANGE COMMISSION

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