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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO/OAKLAND DIVISION**

12 SECURITIES AND EXCHANGE)
COMMISSION,) Case No.: CV-12-4486-WHA
13)
14 Plaintiff)
15 vs.)
16 GARY R. MARKS,)
17 Defendant.)

18
19 **FINAL JUDGMENT AS TO DEFENDANT GARY R. MARKS**
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21 The Securities and Exchange Commission (“Commission”) having filed a Complaint and
22 Defendant Gary R. Marks (“Marks” or “Defendant”) having entered a general appearance;
23 consented to the Court’s jurisdiction over Defendant and the subject matter of this action;
24 consented to entry of this Final Judgment without admitting or denying the allegations of the
25 Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived
26

1 any right to appeal from this Final Judgment, the Court hereby grants the Commission's
2 Unopposed Motion for Entry of Judgment by Consent Against Marks:

3 I.

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
5 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
6 participation with them who receive actual notice of this Final Judgment by personal service or
7 otherwise are permanently restrained and enjoined from violating Section 206(2) of the
8 Investment Adviser's Act of 1940 [15 U.S.C. § 80b-6(2)] by using any means or instrumentality
9 of interstate commerce, or the mails, directly or indirectly, to engage in any transaction, practice,
10 or course of business which operates as a fraud or deceit upon any client or prospective client.
11

12 II.

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
14 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
15 participation with them who receive actual notice of this Final Judgment by personal service or
16 otherwise are permanently restrained and enjoined from violating Section 206(4) of the
17 Investment Adviser's Act of 1940 [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 promulgated
18 thereunder [17 C.F.R. § 206(4)-8], by using any means or instrumentality of interstate commerce,
19 or the mails, directly or indirectly, to engage in any act, practice or course of business which is
20 fraudulent, deceptive, or manipulative, including, while acting as an investment adviser to a
21 pooled investment vehicle to:
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- 23 (1) make any untrue statement of a material fact or omit to state a material fact necessary
24 to make the statements made, in the light of the circumstances under which they were
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1 made, not misleading, to any investor or prospective investor in the pooled
2 investment vehicle; or

3 (2) otherwise engage in any act, practice, or course of business that is fraudulent,
4 deceptive, or manipulative with respect to any investor or prospective investor in the
5 pooled investment vehicle.
6

7 III.

8 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
9 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
10 participation with them who receive actual notice of this Final Judgment by personal service or
11 otherwise are permanently restrained and enjoined from violating Section 17(a)(2) and (a)(3) of
12 the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)(2) and (3)] in the offer or
13 sale of any security by the use of any means or instruments of transportation or communication
14 in interstate commerce or by use of the mails, directly or indirectly:
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16 (a) to obtain money or property by means of any untrue statement of a material fact
17 or any omission of a material fact necessary in order to make the statements
18 made, in light of the circumstances under which they were made, not misleading;
19 or
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21 (b) to engage in any transaction, practice, or course of business which operates or
22 would operate as a fraud or deceit upon the purchaser.
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24 IV.

25 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
26 is liable for disgorgement of \$321,702 representing profits gained as a result of the conduct
27 alleged in the Complaint, together with prejudgment interest thereon in the amount of \$82,866
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1 plus \$334 in interest earned on the settlement funds from the date those funds were escrowed,
2 and a civil penalty in the amount of \$100,000 pursuant to Investment Adviser Act Section 209(e)
3 and Securities Act Section 20(d), for a total of \$504,902. Defendant shall satisfy this payment
4 obligation by paying \$504,902 within 14 days after entry of this Final Judgment to the Securities
5 and Exchange Commission.

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7 Defendant may transmit payment electronically to the Commission, which will provide
8 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly
9 from a bank account or by credit or debit card via Pay.gov through the SEC website at
10 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank
11 cashier's check, or United States postal money order payable to the Securities and Exchange
12 Commission, which shall be delivered or mailed to

13
14 Enterprise Services Center
15 Accounts Receivable Branch
16 6500 South MacArthur Boulevard
17 Oklahoma City, OK 73169

18 and shall be accompanied by a letter identifying the case title, civil action number, and name of
19 this Court; Marks as a defendant in this action; and specifying that payment is made pursuant to
20 this Final Judgment.

21 Defendant shall simultaneously transmit photocopies of evidence of payment and case
22 identifying information to the Commission's counsel in this action. By making this payment,
23 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part
24 of the funds shall be returned to Defendant.

25 The Commission shall hold the funds (collectively, the "Fund") and may propose a plan
26 to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the
27 administration of any distribution of the Fund. If the Commission staff determines that the Fund
28

1 will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment
2 to the United States Treasury.

3 The Commission may enforce the Court's judgment for disgorgement and prejudgment
4 interest by moving for civil contempt (and/or through other collection procedures authorized by
5 law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post
6 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.
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9 V.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the
11 Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a
12 plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of
13 Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the
14 administration of any distribution of the Fund. If the Commission staff determines that the Fund
15 will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment
16 to the United States Treasury.
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19 Regardless of whether any such Fair Fund distribution is made, amounts ordered to be
20 paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the
21 government for all purposes, including all tax purposes. To preserve the deterrent effect of the
22 civil penalty, Defendant shall not, after offset or reduction of any award of compensatory
23 damages in any Related Investor Action based on Defendant's payment of disgorgement in this
24 action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such
25 compensatory damages award by the amount of any part of Defendant's payment of a civil
26 penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such
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1 a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty
2 Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset
3 to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall
4 not be deemed an additional civil penalty and shall not be deemed to change the amount of the
5 civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor
6 Action" means a private damages action brought against Defendant by or on behalf of one or
7 more investors based on substantially the same facts as alleged in the Complaint in this action
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9 VI.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of
11 Defendant Gary R. Marks is incorporated herein with the same force and effect as if fully set
12 forth herein, and that Marks shall comply with all of the agreements set forth therein.
13

14 VII.

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
16 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment until
17 October 25, 2016, unless extended by Court order. Any motion to extend jurisdiction must be filed before
18 jurisdiction expires.

19 Dated: October 25, 2012
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