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14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA**

16 **SAN JOSE DIVISION**

17 SECURITIES AND EXCHANGE  
18 COMMISSION,

19 Case No. C 09-03423 RS

20 Plaintiff,

21 v.

22 DARRYL LAMONTH CLARK,

23 Defendant.

24  
**[PROPOSED] FINAL JUDGMENT  
ORDERING A PERMANENT  
INJUNCTION, DISGORGEMENT,  
PREJUDGMENT INTEREST, CIVIL  
PENALTY AND OTHER RELIEF  
AGAINST DEFENDANT DARRYL  
LAMONTH CLARK**

25  
18 The motion of Plaintiff Securities and Exchange Commission (“Commission”)  
19 for a Final Judgment of Default against Defendant Darryl Lamonth Clark (“Clark”),  
20 pursuant to Rule 55 of the Federal Rules of Civil Procedure, came before this Court for  
21 hearing on December 23, 2009. The Court having considered the Commission’s motion,  
22 the memoranda of points and authorities, the declarations including exhibits relating  
23 thereto, and other documents filed in support of the application, and all other evidence  
24 and argument presented regarding the motion, finds that:

25  
I.

26 IT IS ORDERED, ADJUDGED, AND DECREED that the Commission’s motion  
27 for entry of a final judgment by default against Defendant Clark is hereby GRANTED.

28 //

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Clark, his agents, servants, employees, attorneys, and all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Clark, his agents, servants, employees, attorneys, and all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

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

28 (b) Tom make any untrue statement of a material fact or to omit to state a

1 material fact necessary in order to make the statements made, in the light of  
 2 the circumstances under which they were made, not misleading; or

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

5 IV.

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
 7 Clark, his agents, servants, employees, attorneys, and all persons in active concert or  
 8 participation with any of them who receive actual notice of this Final Judgment by  
 9 personal service or otherwise, and each of them, are permanently restrained and enjoined  
 10 from making use of the mails or any means or instrumentality of interstate commerce to  
 11 effect any transactions in, or to induce or attempt to induce the purchase or sale of, any  
 12 security, without being registered as a broker and/or dealer pursuant to Section 15(b) of  
 13 the Exchange Act, 15 U.S.C. § 78o(b), in violation of Section 15(a) of the Exchange Act  
 14 [15 U.S.C. § 78o(a)].

15 V.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
 17 Clark, his agents, servants, employees, attorneys, and all persons in active concert or  
 18 participation with any of them who receive actual notice of this Final Judgment by  
 19 personal service or otherwise, and each of them, are permanently restrained and enjoined  
 20 from violating Sections 5 of the Securities Act [15 U.S.C. § 77e(a) and 77e(c)], by  
 21 directly or indirectly:

22 (a) unless a registration statement is in effect as to a security, making use of  
 23 any means or instruments of transportation or communication in interstate  
 24 commerce or of the mails to sell such security through the use or medium  
 25 of any prospectus or otherwise;

26 (b) unless a registration is in effect as to a security, carrying or causing to be  
 27 carried through the mails or in interstate commerce, by any means or  
 28 instruments of transportation, any such security for the purpose of sale or

1 for delivery after sale; or  
2 (c) making use of any means or instruments of transportation or  
3 communication in interstate commerce or of the mails to offer to sell or  
4 offer to buy through the use or medium of any prospectus or otherwise any  
5 security, unless a registration statement has been filed with the  
6 Commission as to such security, or while the registration statement is the  
7 subject of a refusal order or stop order or (prior to the effective date of the  
8 registration statement) any public proceeding or examination under Section  
9 8 of the Securities Act, 15 U.S.C. § 77h.

10 VI.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
12 Clark shall be liable for disgorgement of \$779,849.09, together with prejudgment interest  
13 thereon in the amount of \$107,858.14, for a total of \$887,707.23.

14 VII.

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
16 Clark shall pay a civil penalty in the amount of \$130,000 pursuant to Section 20(d) of  
17 the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15  
18 U.S.C. § 78u(d)(3)].

19 VIII.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
21 Clark shall make the payments ordered above within ten (10) business days after entry of  
22 this Final Judgment by certified check, bank cashier's check or United States postal  
23 money order payable to the Securities and Exchange Commission. The payment shall be  
24 delivered or mailed to the Office of Financial Management, Securities and Exchange  
25 Commission, Operations Center, 6432 General Green Way, Mail Stock 0-3, Alexandria,  
26 Virginia 22312, and shall be accompanied by a letter identifying Clark as the defendant  
27 in this action; setting forth the title and civil action number of this action and the name of  
28 this Court; and specifying that payment is made on behalf of Clark, pursuant to this Final

1 Judgment. A copy of the letter and payment shall also be delivered or mailed to counsel  
2 for the Commission in this action at the Los Angeles Regional Office, located at 5670  
3 Wilshire Blvd., 11<sup>th</sup> Floor, Los Angeles, California 90036, identifying the enforcement  
4 action as LA-3320 and providing the paying defendant's Social Security Number.  
5 Defendant Clark shall pay post-judgment interest on any delinquent amounts pursuant to  
6 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph  
7 to the United States Treasury.

IX.

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

X.

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

18 | DATED: March 8, 2010

  
THE HONORABLE RICHARD SEEBOORG  
UNITED STATES DISTRICT JUDGE

24 | Presented by:

26                   /s/ William S. Fiske  
27                   JOHN M. MCCOY III  
28                   WILLIAM S FISKE  
Atorneys for Plaintiff  
Securities and Exchange Commission