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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

16 THOMAS S. WU,

17 Defendant.

Case No. 11-cv-4988 JSW

~~PROPOSED~~ FINAL JUDGMENT
AGAINST DEFENDANT THOMAS S.
WU

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1 This matter came before the Court on a motion for final judgment against defendant
2 Thomas S. Wu (“defendant”) by Plaintiff Securities and Exchange Commission (the
3 “Commission”). The Court has received and considered the motion, the Commission’s
4 memorandum of points and authorities, the Declaration of Jason M. Habermeyer and all exhibits
5 attached to the declaration, and all other submissions, written or oral, at or before the hearing.

6 Good cause appearing, the Court grants the Commission’s motion and orders as follows:

7 **I.**

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that defendant is
9 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b)
10 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and
11 Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or
12 instrumentality of interstate commerce, or of the mails, or of any facility of any national
13 securities exchange, in connection with the purchase or sale of any security:

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

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

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

20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
21 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
22 the following who receive actual notice of this Final Judgment by personal service or
23 otherwise: (a) defendant’s officers, agents, servants, employees, and attorneys; and (b)
24 other persons in active concert or participation with defendant or with anyone described
25 in (a).

26 **II.**

27 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
28 defendant is permanently restrained and enjoined from violating Section 17(a) of the

1 Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of
2 any security by the use of any means or instruments of transportation or communication
3 in interstate commerce or by the use of the mails, directly or indirectly:

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

5 (b) to obtain money or property by means of any untrue statement of a
6 material fact or any omission of a material fact necessary in order to make the statements
7 made, in light of the circumstances under which they were made, not misleading; or

8 (c) to engage in any transaction, practice, or course of business which operates
9 or would operate as a fraud or deceit upon the purchaser.

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
11 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
12 the following who receive actual notice of this Final Judgment by personal service or
13 otherwise: (a) defendant’s officers, agents, servants, employees, and attorneys; and (b)
14 other persons in active concert or participation with defendant or with anyone described
15 in (a).

16 **III.**

17 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
18 defendant is permanently restrained and enjoined from aiding and abetting any violation
19 of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and
20 13a-11 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-11], by knowingly
21 providing substantial assistance to an issuer which has a class of securities registered
22 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the
23 Exchange Act [15 U.S.C. § 78o] in failing to file with the Commission such accurate and
24 complete information, reports, and documents as are required to be filed with the
25 Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the
26 Commission’s Rules, including annual reports on Form 10-K and current reports on
27 Form 8-K.
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1 accounting controls sufficient to provide reasonable assurance that transactions are
2 recorded as necessary to permit preparation of financial statements in conformity with
3 generally accepted accounting principles or other applicable criteria, and to maintain
4 accountability for assets.

5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
6 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
7 the following who receive actual notice of this Final Judgment by personal service or
8 otherwise: (a) defendant's officers, agents, servants, employees, and attorneys; and (b)
9 other persons in active concert or participation with defendant or with anyone described
10 in (a).

11 VI.

12 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
13 defendant is permanently restrained and enjoined from, directly or indirectly, violating
14 Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly
15 circumventing or failing to implement a system of internal accounting controls, or by
16 knowingly falsifying any book, record, or account described in Section 13(b)(2) of the
17 Exchange Act [15 U.S.C. § 78m(b)(2)].

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
19 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
20 the following who receive actual notice of this Final Judgment by personal service or
21 otherwise: (a) defendant's officers, agents, servants, employees, and attorneys; and (b)
22 other persons in active concert or participation with defendant or with anyone described
23 in (a).

24 VII.

25 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
26 defendant is permanently restrained and enjoined from, directly or indirectly, violating
27 Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing to
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1 be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange
2 Act [15 U.S.C. § 78m(b)(2)(A)].

3 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
4 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
5 the following who receive actual notice of this Final Judgment by personal service or
6 otherwise: (a) defendant's officers, agents, servants, employees, and attorneys; and (b)
7 other persons in active concert or participation with defendant or with anyone described
8 in (a).

9 **VIII.**

10 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
11 defendant is permanently restrained and enjoined from, directly or indirectly, violating
12 Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by making or causing to
13 be made a materially false or misleading statement to an accountant, or omitting any
14 material fact necessary in order to make statements made to an accountant not
15 misleading, in connection with any audit, review or examination of the financial
16 statements of an issuer.

17 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
18 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
19 the following who receive actual notice of this Final Judgment by personal service or
20 otherwise: (a) defendant's officers, agents, servants, employees, and attorneys; and (b)
21 other persons in active concert or participation with defendant or with anyone described
22 in (a).

23 **IX.**

24 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
25 defendant is permanently restrained and enjoined from, directly or indirectly, violating
26 Rule 13a-14 under the Exchange Act [17 C.F.R. § 240.13a-14] by, as a principal
27 executive officer or principal financial officer of an issuer or as a person performing
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1 similar functions, falsely certifying any report filed under Section 13(a) of the Exchange
2 Act [15 U.S.C. §78m(a)], including reports filed on Form 10-Q or Form 10-K.

3 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
4 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
5 the following who receive actual notice of this Final Judgment by personal service or
6 otherwise: (a) defendant's officers, agents, servants, employees, and attorneys; and (b)
7 other persons in active concert or participation with defendant or with anyone described
8 in (a).

9 **X.**

10 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that,
11 pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section
12 20(e) of the Securities Act [15 U.S.C. § 77t(e)], defendant is prohibited from acting as an
13 officer or director of any issuer that has a class of securities registered pursuant to
14 Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports
15 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

16 **XI.**

17 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant
18 shall pay a civil penalty in the amount of \$ 525,000.00 to the Securities and
19 Exchange Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C.
20 § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. Defendant shall
21 make this payment within 14 days after entry of this Final Judgment.

22 Defendant may transmit payment electronically to the Commission, which will
23 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be
24 made directly from a bank account via Pay.gov through the SEC website at
25 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check,
26 bank cashier's check, or United States postal money order payable to the Securities and
27 Exchange Commission, which shall be delivered or mailed to:
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Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

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

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission’s counsel in this action. By making this payment, defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendant shall pay post- judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

XII.

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

DATED: September 20, 2017


UNITED STATES DISTRICT JUDGE