

1 JS-6  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

KEENAN GRACEY,

Defendant.

Case No. 2:18-cv-03872-AB(ASx)

**[PROPOSED] DEFAULT JUDGMENT  
AGAINST KEENAN GRACEY**

This matter came before the Court on the Securities and Exchange Commission’s (“SEC”) Application for Entry of Default Judgment against Defendant Keenan Gracey. The Court having considered the SEC’s Complaint, the Application, the supporting Memorandum of Points and Authorities, the supporting declarations and exhibits, and the other evidence and argument presented to the Court, finds that:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the SEC’s Application for Default Judgment Against Defendant Keenan Gracey (“Defendant” or “Gracey”) is GRANTED.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED, that Defendant is permanently restrained and enjoined from, directly or indirectly, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- A. employing any device, scheme or artifice to defraud;
- B. obtaining 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. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

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

III.

IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- A. employing any device, scheme or artifice to defraud;
- B. making any untrue statement of a material fact or omitting 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
- B. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(a) & (c) thereunder, 17 C.F.R. §§ 240.10b-5(a) & (c).

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

IV.

IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from, directly or indirectly, participating in the issuance, purchase, offer or sale of any securities, except for the purchase or sale of securities listed on a national securities exchange for his own personal account.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and

1 attorneys; and (b) other persons in active concert or participation with Defendant  
2 Chen or with anyone described in (a).

3 **V.**

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
5 Defendant is liable for disgorgement \$4,403,500, representing profits gained as a  
6 result of the conduct alleged in the complaint, together with prejudgment interest  
7 thereon in the amount of \$37,873.22, and a civil penalty in the amount of \$4,403,500,  
8 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section  
9 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant shall satisfy this  
10 obligation by paying \$8,844,873.22 to the Securities and Exchange Commission  
11 within 14 days after entry of this Final Judgment.

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

18 Enterprise Services Center  
19 Accounts Receivable Branch  
20 6500 South MacArthur Boulevard  
21 Oklahoma City, OK 73169

22  
23 and shall be accompanied by a letter identifying the case title, civil action number,  
24 and name of this Court; [Defendant's name] as a defendant in this action; and  
25 specifying that payment is made pursuant to this Final Judgment.

26 Defendant shall simultaneously transmit photocopies of evidence of payment  
27 and case identifying information to the Commission's counsel in this action. By  
28 making this payment, Defendant relinquishes all legal and equitable right, title, and

1 interest in such funds and no part of the funds shall be returned to Defendant.

2       The Commission shall hold the funds (collectively, the “Fund”) and may  
3 propose a plan to distribute the Fund subject to the Court’s approval. The Court shall  
4 retain jurisdiction over the administration of any distribution of the Fund. If the  
5 Commission staff determines that the Fund will not be distributed, the Commission  
6 shall send the funds paid pursuant to this Final Judgment to the United States  
7 Treasury.

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

13       Regardless of whether any such Fair Fund distribution is made, amounts  
14 ordered to be paid as civil penalties pursuant to this Judgment shall be treated as  
15 penalties paid to the government for all purposes, including all tax purposes. To  
16 preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or  
17 reduction of any award of compensatory damages in any Related Investor Action  
18 based on Defendant’s payment of disgorgement in this action, argue that he is entitled  
19 to, nor shall he further benefit by, offset or reduction of such compensatory damages  
20 award by the amount of any part of Defendant’s payment of a civil penalty in this  
21 action (“Penalty Offset”). If the court in any Related Investor Action grants such a  
22 Penalty Offset, Defendant shall, within 30 days after entry of a final order granting  
23 the Penalty Offset, notify the Commission’s counsel in this action and pay the amount  
24 of the Penalty Offset to the United States Treasury or to a Fair Fund, as the  
25 Commission directs. Such a payment shall not be deemed an additional civil penalty  
26 and shall not be deemed to change the amount of the civil penalty imposed in this  
27 Judgment. For purposes of this paragraph, a “Related Investor Action” means a  
28 private damages action brought against Defendant by or on behalf of one or more

1 investors based on substantially the same facts as alleged in the Complaint in this  
2 action.

3 **VI.**

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED, that  
5 until such time that Defendant pays, in full, the disgorgement, prejudgment interest,  
6 and civil penalty imposed herein, the freeze, previously ordered by the Court 9 (*see*  
7 Dkt. Nos. 4, 13), shall remain in place on all monies and assets (with an allowance for  
8 necessary and reasonable living expenses to be granted only upon good cause shown  
9 by application to the Court with notice to and an opportunity for the SEC to be heard)  
10 in all accounts at any bank, financial institution or brokerage firm, or third-payment  
11 payment processor, all certificates of deposit, and other funds or assets, held in the  
12 name of, for the benefit of, or over which account authority is held by Defendant,  
13 except to the extent that such monies and assets are used for the sole and exclusive  
14 purpose of satisfying this Final Judgment, and except as provided by Section VIII of  
15 this Final Judgment.

16 **VII.**

17 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED, that  
18 until such time that Defendant pays, in full, the disgorgement, prejudgment interest,  
19 and civil penalty imposed herein, the order prohibiting the destruction of documents,  
20 previously ordered by the Court (*see* Dkt. Nos. 4, 13 ), shall remain in place.

21 **VIII.**

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that within 3  
23 days after being served with a copy of this Final Judgment, JP Morgan Chase, Wells  
24 Fargo, N.A., and Union Bank shall transfer the entire balance of the following bank  
25 account(s) which were frozen pursuant to an Order of this Court to the Commission:  
26  
27  
28

| <b>Bank Name</b>  | <b>Account Name</b> | <b>Account Number</b> |
|-------------------|---------------------|-----------------------|
| JP Morgan Chase   | Keenan Gracey       | XXXX9697              |
| Wells Fargo, N.A. | Keenan Gracey       | XXXXX1901             |
| Union Bank.       | Keenan Gracey       | XXXXX0699             |

JP Morgan Chase, Wells Fargo, N.A., and Union Bank may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. JP Morgan Chase, Wells Fargo, N.A., and Union Bank also may transfer these funds by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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; and specifying that payment is made pursuant to this Final Judgment.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,

1 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant,  
2 and further, any debt for disgorgement, prejudgment interest, civil penalty or other  
3 amounts due by Defendant under this Final Judgment or any other judgment, order,  
4 consent order, decree or settlement agreement entered in connection with this  
5 proceeding, is a debt for the violation by Defendant of the federal securities laws or  
6 any regulation or order issued under such laws, as set forth in Section 523(a)(19) of  
7 the Bankruptcy Code, 11 U.S.C. §523(a)(19).

8 **X.**

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

12 **XI.**

13 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this  
14 action for the purpose of enforcing the terms of this Judgment and implementing and  
15 carrying out the terms of all orders and decrees which may be entered herein and to  
16 entertain any suitable application or motion for additional relief within the  
17 jurisdiction of this Court.

18 **XII.**

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

22  
23 IT IS SO ORDERED.

24  
25 Dated: November 05, 2018



26  
27  
28 HON. ANDRÉ BIROTTÉ JR.  
UNITED STATES DISTRICT JUDGE