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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Western Division**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

DONALD J. KELLEN,

Defendant.

Case No. 2:20-cv-03861-RSWL-AGRx
**FINAL JUDGMENT AS TO
DEFENDANT DONALD J. KELLEN**

The Securities and Exchange Commission having filed a Complaint and Defendant Donald J. Kellen having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

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I.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is 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:

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

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).

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “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;

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

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

13 **III.**

14 It Is HEREBY Further Ordered, Adjudged, And Decreed that Defendant is
15 liable for disgorgement of \$51,157.00, representing net profits gained as a result of the
16 conduct alleged in the Complaint, together with prejudgment interest thereon in the
17 amount of \$3,195.00, and a civil penalty in the amount of \$25,648 pursuant to Section
18 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange
19 Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation by paying
20 \$80,000 to the Securities and Exchange Commission pursuant to the terms of the
21 payment schedule set forth in paragraph IV below 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
24 be 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
26 check, bank cashier's check, or United States postal money order payable to the
27 Securities and Exchange Commission, which shall be delivered or mailed to

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1 Enterprise Services Center
2 Accounts Receivable Branch
3 6500 South MacArthur Boulevard
4 Oklahoma City, OK 73169

5 and shall be accompanied by a letter identifying the case title, civil action number,
6 and name of this Court; Donald J. Kellen as a defendant in this action; and specifying
7 that payment is made pursuant to this Final Judgment.

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

12 The Commission may enforce the Court's judgment for disgorgement and
13 prejudgment interest by using all collection procedures authorized by law, including,
14 but not limited to, moving for civil contempt at any time after 30 days following entry
15 of this Final Judgment.

16 The Commission may enforce the Court's judgment for penalties by the use of
17 all collection procedures authorized by law, including the Federal Debt Collection
18 Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the
19 violation of any Court orders issued in this action. Defendant shall pay post
20 judgment interest on any amounts due after 30 days of the entry of this Final
21 Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds,
22 together with any interest and income earned thereon (collectively, the "Fund"),
23 pending further order of the Court.

24 The Commission may propose a plan to distribute the Fund subject to the
25 Court's approval. Such a plan may provide that the Fund shall be distributed
26 pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of
27 2002. The Court shall retain jurisdiction over the administration of any distribution
28 of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

1 If Defendant fails to make any payment by the date agreed and/or in the
2 amount agreed according to the schedule set forth above, all outstanding payments
3 under this Final Judgment, including post-judgment interest, minus any payments
4 made, shall become due and payable immediately at the discretion of the staff of the
5 Commission without further application to the Court.

6 **V.**

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

11 **VI.**

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
13 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
14 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant,
15 and further, any debt for disgorgement, prejudgment interest, civil penalty or other
16 amounts due by Defendant under this Final Judgment or any other judgment, order,
17 consent order, decree or settlement agreement entered in connection with this
18 proceeding, is a debt for the violation by Defendant of the federal securities laws or
19 any regulation or order issued under such laws, as set forth in Section 523(a)(19) of
20 the Bankruptcy Code, 11 U.S.C. §523(a)(19).

21 **VII.**

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

25 Dated: September 16, 2022

26 /S/ RONALD S.W. LEW
27 HON. RONALD S.W. LEW
28 UNITED STATES DISTRICT JUDGE

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