

THE HONORABLE RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
vs.
KIRK SPERRY, and
SPERRY AND SONS CAPITAL INVESTMENTS,
LLC,
Defendants.

Civil Action No. 2:20-cv-01337-RSM

**JUDGMENT AS TO DEFENDANT
SPERRY AND SONS CAPITAL
INVESTMENTS, LLC**

The Securities and Exchange Commission having filed a Complaint and Defendant Sperry and Sons Capital Investments, LLC (“Sperry and Sons” or “Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over it and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph V); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

IT IS HEREBY 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 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 FURTHER 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;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made,

1 not misleading; or

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

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

9 III.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
11 Defendant shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil
12 penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section
13 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Court shall determine the amounts
14 of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest
15 shall be calculated from September 24, 2015, based on the rate of interest used by the Internal
16 Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C.
17 § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil
18 penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from
19 arguing that it did not violate the federal securities laws as alleged in the Complaint; (b)
20 Defendant may not challenge the validity of the Consent or this Judgment; (c) solely for the
21 purposes of such motion, the allegations of the Complaint shall be accepted as and deemed
22 true by the Court; and (d) the Court may determine the issues raised in the motion on the basis
23 of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and
24 documentary evidence, without regard to the standards for summary judgment contained in
25 Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's
26 motion for disgorgement and/or civil penalties, the parties may take discovery, including
27 discovery from appropriate non-parties.

IV.

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

V.

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

VI.

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 Judgment.

VII.

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

Dated: May 5, 2021



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

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