

1 JINA L. CHOI (NY Bar No. 2699718)  
2 MICHAEL S. DICKE (Cal. Bar No. 158187)  
3 LLOYD A. FARNHAM (Cal. Bar No. 202231)  
4 farnhaml@sec.gov  
5 MONIQUE C. WINKLER (Cal. Bar. No 213031)  
6 winklerm@sec.gov

7 Attorneys for Plaintiff  
8 SECURITIES AND EXCHANGE  
9 COMMISSION  
10 44 Montgomery Street, Suite 2800  
11 San Francisco, California 94104  
12 Telephone: (415) 705-2500  
13 Facsimile: (415) 705-2501

14 UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA  
16 SACRAMENTO DIVISION

17 SECURITIES AND EXCHANGE COMMISSION,  
18 Plaintiff,  
19 vs.  
20 ANTHONY VASSALLO, et al.  
21 Defendants.

22 Case No. 2:09-CV-00665-LKK-DAD  
23 [AMENDED]  
24 FINAL JUDGMENT  
25 AGAINST KENNETH KENITZER

26 This matter came on for hearing on the motion of plaintiff Securities and Exchange  
27 Commission (“Commission”) for issuance of a final judgment against defendant Kenneth  
28 Kenitzer. Having considered the papers and argument submitted in support of the motion,  
there being no opposition, the Commission’s motion is hereby GRANTED, as follows:

I.

IT IS ORDERED THAT Kenitzer and his agents, servants, employees, attorneys, and  
those persons in active concert or participation with any of them, who receive actual notice of  
this Judgment, by personal service or otherwise, and each of them, are permanently restrained  
and enjoined from, in the offer or sale of any securities, by the use of any means or

1 instruments of transportation or communication in interstate commerce or by the use of the  
2 mails, directly or indirectly:

- 3 A. employing any device, scheme, or artifice to defraud; or  
4 B. obtaining money or property by means of any untrue statement of a material  
5 fact or any omission to state a material fact necessary in order to make the  
6 statements made, in light of the circumstances under which they were made,  
7 not misleading; or  
8 C. engaging in any transaction, practice, or course of business which operates or  
9 would operate as a fraud or deceit upon the purchaser;

10 in violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §  
11 77q(a)].

12 II.

13 IT IS FURTHER ORDERED THAT Kenitzer and his agents, servants, employees,  
14 attorneys, and those persons in active concert or participation with any of them, who receive  
15 actual notice of this Judgment, by personal service or otherwise, and each of them, are  
16 permanently restrained and enjoined from, directly or indirectly, by the use of any means or  
17 instrumentality of interstate commerce, or of the mails, or of any facility of any national  
18 securities exchange:

- 19 A. employing any device, scheme, or artifice to defraud;  
20 B. making any untrue statement of a material fact or omitting to state a material  
21 fact necessary in order to make the statements made, in the light of the  
22 circumstances under which they were made, not misleading; or  
23 C. engaging in any act, practice, or course of business which operates or would  
24 operate as a fraud or deceit upon any person;

1 in connection with the purchase or sale of any security, in violation of Section 10(b) of the  
2 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Exchange Act  
3 Rule 10b-5 [17 C.F.R. § 240.10b-5].

4 III.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Kenitzer shall pay  
6 disgorgement of his ill-gotten gains in the amount of \$43,288,725.08 plus prejudgment  
7 interest of \$874,048.92, for a total of \$44,162,774.00. Defendant shall satisfy this obligation  
8 by paying \$44,162,774.00 to the Securities and Exchange Commission within 14 days after  
9 entry of this Final Judgment.

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

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

20 and shall be accompanied by a letter identifying the case title, civil action number, and name  
21 of this Court; Kenneth Kenitzer as a defendant in this action; and specifying that payment is  
22 made pursuant to this Final Judgment.

23 Defendant shall simultaneously transmit photocopies of evidence of payment and case  
24 identifying information to the Commission’s counsel in this action. By making this payment,  
25 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no  
26 part of the funds shall be returned to Defendant.

27 The Commission shall hold the funds (collectively, the “Fund”) and may propose a

1 plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction  
2 over the administration of any distribution of the Fund. If the Commission staff determines  
3 that the Fund will not be distributed, the Commission shall send the funds paid pursuant to  
4 this Final Judgment to the United States Treasury.

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

10 Defendant is also subject to a restitution order of \$43,288,725.08 in a separate  
11 criminal proceeding, *U.S. v. Kenitzer*, 2:09-cr-00459-GEB (E.D. Cal.). All payments the  
12 Defendant makes pursuant to that restitution order will be credited against his disgorgement  
13 obligation under this Final Judgment. In addition, all payments made by Defendant Anthony  
14 Vassallo, either pursuant to any order of disgorgement arising from this action or pursuant to  
15 the restitution order in the criminal proceeding *U.S. v. Vassallo*, 2:09-cr-00179-GEB (E.D.  
16 Cal.), will be credited against Kenitzer's disgorgement obligation under this Final Judgment.

17 IV.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall  
19 pay a civil penalty in the amount of \$390,000 to the Securities and Exchange Commission  
20 pursuant to 15 U.S.C. § 77t(d)(2) (Securities Act) and 15 U.S.C. § 78u(d) (Exchange Act).  
21 Defendant shall 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, bank  
26 cashier's check, or United States postal money order payable to the Securities and Exchange  
27

1 Commission, which shall be delivered or mailed to

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

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

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

15 V.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of  
17 Defendant Kenneth Kenitzer to Judgment of Permanent Injunction and Other Relief (Docket  
18 No. 127) is incorporated herein with the same force and effect as if fully set forth herein, and  
19 that Defendant shall comply with all of the undertakings and agreements set forth therein.


20 VI.

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

24 VII.

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

1  
2 Date: July 8, 2014  
3  
4

5   
6 LAWRENCE K. KARLTON  
7 SENIOR JUDGE  
8 UNITED STATES DISTRICT COURT  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28