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 11                                   UNITED STATES DISTRICT COURT  
 12                                   NORTHERN DISTRICT OF CALIFORNIA  
 13                                   SAN FRANCISCO DIVISION  
 14

15 SECURITIES AND EXCHANGE  
 16 COMMISSION,

17                                   Plaintiff,

18                                   v.

19 MICHAEL F. KARA,

20                                   Defendant.

Case No. 3:09-cv-1880-EMC

~~21~~ **[PROPOSED] ORDER OF FINAL  
 22 JUDGMENT AS TO DEFENDANT  
 23 MICHAEL KARA**

Honorable Edward M. Chen  
 Courtroom 5, 17th Floor

1 Plaintiff Securities and Exchange Commission (“Commission”) moved for summary  
2 judgment against Defendant Michael Kara, pursuant to Rule 56 of the Federal Rules of Civil  
3 Procedure. By its motion, the Commission seeks summary judgment against the defendant on  
4 each of the claims for relief against him, based upon the lack of a genuine issue of material fact.  
5 The Commission also seeks remedial sanctions, including the entry of an injunction against the  
6 defendant, an order that he disgorge certain ill-gotten gains with prejudgment interest, and an  
7 order requiring the defendant to pay civil monetary penalties.

8 The Court, having considered the Commission’s motion and any response thereto, and  
9 having found that good cause appears therefrom, has granted the Commission’s motion for  
10 summary judgment in part and denied it in part. Specifically, the Court found Defendant civilly  
11 liable of securities fraud, granted the Commission’s request for an injunction against Defendant,  
12 and granted the Commission’s requests for disgorgement and for prejudgment interest, as  
13 modified. The Court denied the Commission’s request for civil penalties.

14 Accordingly, in this Final Judgment as to Defendant Michael Kara (“Final Judgment”):

15 I.

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and his  
17 agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation  
18 with any of them, who receive actual notice of this Final Judgment, by personal service or  
19 otherwise, and each of them, are permanently restrained and enjoined from violating, directly or  
20 indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15  
21 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, by using any means or instrumentality  
22 of interstate commerce, or of the mails, or of any facility of any national securities exchange, in  
23 connection with the purchase or sale of any security:

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

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

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

3 II.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
5 Defendant's agents, servants, employees, attorneys, and all persons in active concert or  
6 participation with them who receive actual notice of this Final Judgment by personal service or  
7 otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange  
8 Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in  
9 connection with any tender offer or request or invitation for tenders, from engaging in any  
10 fraudulent, deceptive, or manipulative act or practice, by:

11 (a) purchasing or selling or causing to be purchased or sold the securities sought or to  
12 be sought in such tender offer, securities convertible into or exchangeable for any such securities  
13 or any option or right to obtain or dispose of any of the foregoing securities while in possession  
14 of material information relating to such tender offer that Defendant knows or has reason to know  
15 is nonpublic and knows or has reason to know has been acquired directly or indirectly from the  
16 offering person; the issuer of the securities sought or to be sought by such tender offer; or any  
17 officer, director, partner, employee or other person acting on behalf of the offering person of  
18 such issuer, unless within a reasonable time prior to any such purchase or sale such information  
19 and its source are publicly disclosed by press release or otherwise; or

20 (b) communicating material, nonpublic information relating to a tender offer, which  
21 Defendant knows or has reason to know is nonpublic and knows or has reason to know has been  
22 acquired directly or indirectly from the offering person; the issuer of the securities sought or to  
23 be sought by such tender offer; or any officer, director, partner, employee, advisor, or other  
24 person acting on behalf of the offering person of such issuer, to any person under circumstances  
25 in which it is reasonably foreseeable that such communication is likely to result in the purchase  
26 or sale of securities in the manner described in subparagraph (a) above, except that this  
27 paragraph shall not apply to a communication made in good faith (i) to the officers, directors,  
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1 partners or employees of the offering person, to its advisors or to other persons, involved in the  
2 planning, financing, preparation or execution of such tender offer; (ii) to the issuer whose  
3 securities are sought or to be sought by such tender offer, to its officers, directors, partners,  
4 employees or advisors or to other persons involved in the planning, financing, preparation or  
5 execution of the activities of the issuer with respect to such tender offer; or (iii) to any person  
6 pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

7 III.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant is liable  
9 for, and ordered to disgorge, his ill-gotten gains as a result of the conduct alleged in the  
10 Complaint, in the amount of \$424,988, together with prejudgment interest thereon in the amount  
11 of \$46,686.84, for a total disgorgement amount of \$471,674.84. Defendant shall satisfy this  
12 obligation by paying \$471,674.84 to the Securities and Exchange Commission within 14 days  
13 after entry of this Final Judgment.

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

20 Enterprise Services Center  
21 Accounts Receivable Branch  
22 6500 South MacArthur Boulevard  
23 Oklahoma City, OK 73169

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

26 Defendant shall simultaneously transmit photocopies of evidence of payment and case  
27 identifying information to the Commission's counsel in this action. By making this payment,  
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1 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part  
2 of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant  
3 to this Final Judgment to the United States Treasury.

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

8 IV.

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

11  
12 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil  
13 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

14  
15 IT IS SO ORDERED. The clerk of the Court is directed to close this  
16 case.

17  
18 March 30, 2016

19 Dated: \_\_\_\_\_

