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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 SECURITIES AND EXCHANGE COMMISSION,

No. CV-11-1356 (~~SC~~) WHA

14 Plaintiff,

15 vs.

16 JSW FINANCIAL INC., JAMES S. WARD, DAVID
S. LEE, EDWARD G. LOCKER, RICHARD F.
17 TIPTON, and DAVID C. LIN,

**CONSENT OF DEFENDANT
DAVID S. LEE**

18 Defendants,

19 and

20 BLUE CHIP REALTY FUND LLC and
SHORELINE INVESTMENT FUND, LLC,

21 Relief Defendants.
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1 1. Defendant David S. Lee (“Defendant”) acknowledges having been served with
2 the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over
3 Defendant and over the subject matter of this action.

4 2. Without admitting or denying the allegations of the complaint (except as provided
5 herein in paragraph 10 and except as to personal and subject matter jurisdiction, which Defendant
6 admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the
7 “Final Judgment”) and incorporated by reference herein, which, among other things:

- 8 (a) permanently restrains and enjoins Defendant from violation of Section 17(a) of
9 the Securities Act of 1933 [15 U.S.C. § 77q(a)], Section 10(b) of the Securities
10 Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R.
11 § 240.10b-5], and from aiding and abetting violations of Sections 206(1) and 206(2) of
12 the Investment Advisers Act of 1940 [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]; and
13 (b) orders Defendant to pay disgorgement in the amount of \$500,000 plus
14 prejudgment interest thereon in the amount of \$102,057.09.

15 3. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule
16 52 of the Federal Rules of Civil Procedure.

17 4. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the
18 Final Judgment.

19 5. Defendant enters into this Consent voluntarily and represents that no threats, offers,
20 promises, or inducements of any kind have been made by the Securities and Exchange Commission
21 (“Commission”) or any member, officer, employee, agent, or representative of the Commission to
22 induce Defendant to enter into this Consent.

23 6. Defendant agrees that this Consent shall be incorporated into the Final Judgment with
24 the same force and effect as if fully set forth therein.

25 7. Defendant will not oppose the enforcement of the Final Judgment on the ground, if
26 any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby
27 waives any objection based thereon.

1 8. Defendant waives service of the Final Judgment and agrees that entry of the Final
2 Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its
3 terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty
4 days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration
5 stating that Defendant has received and read a copy of the Final Judgment.

6 9. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted
7 against Defendant in this civil proceeding. Defendant acknowledges that no promise or
8 representation has been made by the Commission or any member, officer, employee, agent, or
9 representative of the Commission with regard to any criminal liability that may have arisen or may
10 arise from the facts underlying this action or immunity from any such criminal liability. Defendant
11 waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the
12 imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's
13 entry of a permanent injunction may have collateral consequences under federal or state law and the
14 rules and regulations of self-regulatory organizations, licensing boards, and other regulatory
15 organizations. Such collateral consequences include, but are not limited to, a statutory
16 disqualification with respect to membership or participation in, or association with a member of, a
17 self-regulatory organization. This statutory disqualification has consequences that are separate from
18 any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding
19 before the Commission based on the entry of the injunction in this action, Defendant understands that
20 he shall not be permitted to contest the factual allegations of the Complaint in this action. Nothing in
21 this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual
22 positions in litigation or other legal proceedings in which the Commission is not a party.

23 10. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e),
24 which provides in part that it is the Commission's policy "not to permit a defendant or respondent to
25 consent to a judgment or order that imposes a sanction while denying the allegations in the complaint
26 or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the
27 defendant or respondent states that he neither admits nor denies the allegations." As part of

1 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any
2 action or make or permit to be made any public statement (which does not include legal or factual
3 positions taken in litigation or other legal proceedings in which the Commission is not a party)
4 denying, directly or indirectly, any allegation in the Complaint or creating the impression that the
5 Complaint is without factual basis; (ii) will not make or permit to be made any public statement
6 (which does not include legal or factual positions taken in litigation or other legal proceedings in
7 which the Commission is not a party) to the effect that Defendant does not admit the allegations of
8 the Complaint, or that this Consent contains no admission of the allegations, without also stating that
9 Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby
10 withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint;
11 and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523(a)(19)(A)(i),
12 (B) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19)(A)(i), (B), that the allegations in the Complaint
13 are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other
14 amounts due by Defendant under the Final Judgment or any other judgment, order, consent order,
15 decree or settlement agreement entered in connection with this proceeding, is a debt for the violation
16 by Defendant of the federal securities laws or any regulation or order issued under such laws, as set
17 forth in Section 523(a)(19)(A)(i) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19)(A)(i). If Defendant
18 breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and
19 restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial
20 obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in
21 which the Commission is not a party.

22 11. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small
23 Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from
24 the United States, or any agency, or any official of the United States acting in his or her official
25 capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs
26 expended by Defendant to defend against this action. For these purposes, Defendant agrees that
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1 Defendant is not the prevailing party in this action since the parties have reached a good faith
2 settlement.

3 12. In connection with this action and any related judicial or administrative proceeding or
4 investigation commenced by the Commission or to which the Commission is a party, Defendant (i)
5 agrees to appear and be interviewed by Commission staff at such times and places as the staff
6 requests upon reasonable notice; (ii) will accept service by mail or email of notices or subpoenas
7 issued by the Commission for documents or testimony at depositions, hearings, or trials, or in
8 connection with any related investigation by Commission staff; (iii) appoints Defendant's
9 undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to
10 such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the
11 Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the
12 testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing
13 U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any
14 United States District Court for purposes of enforcing any such subpoena.

15 13. Defendant agrees that the Commission may present the Final Judgment to the Court
16 for signature and entry without further notice.

17 14. Defendant agrees that this Court shall retain jurisdiction over this matter for the
18 purpose of enforcing the terms of the Final Judgment.

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20 Dated: 01-13, 2016



21 David S. Lee

1 On _____, 2016, David S. Lee, a person known to me, personally appeared before
2 me and acknowledged executing the foregoing Consent.

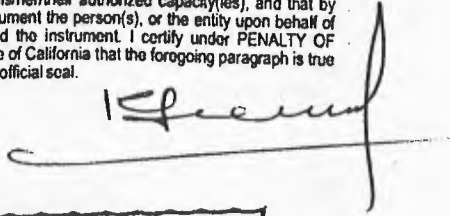
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5 Notary Public

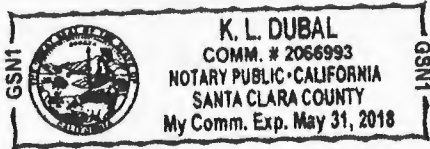
6 Commission Expiration:

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8 A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

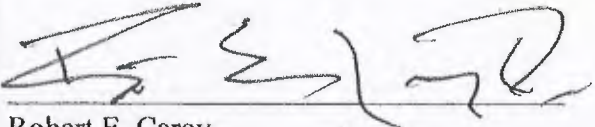
9 State of California County of Santa Clara ss.
On 01/13/2016 before me, K. L. Dubal, Notary Public,
10 personally appeared David S Lee

11 who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
12 which the person(s) acted, executed the instrument. I certify under PENALTY OF
PERJURY under the laws of the State of California that the foregoing paragraph is true
and correct. WITNESS my hand and official seal.

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1 Approved as to form:

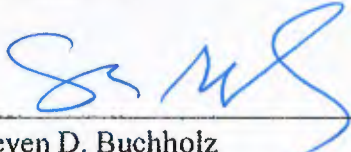
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4 Robert E. Carey
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10 Attorney for Defendant
11 DAVID S. LEE

12
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14 Submitted by:

15 

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24 Attorney for Plaintiff
25 SECURITIES AND EXCHANGE COMMISSION
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

No. CV-11-1356 (~~SC~~) WHA

Plaintiff,

vs.

JSW FINANCIAL INC., JAMES S. WARD, DAVID
S. LEE, EDWARD G. LOCKER, RICHARD F.
TIPTON, and DAVID C. LIN,

Defendants,

and

BLUE CHIP REALTY FUND LLC and
SHORELINE INVESTMENT FUND, LLC,

Relief Defendants.

FINAL JUDGMENT AS TO DEFENDANT DAVID S. LEE

The Securities and Exchange Commission having filed a Complaint and Defendant David S. Lee 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 VII); waived findings of fact and conclusions of law; and waived any right to appeal from this Final 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 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 FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the

1 “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or
2 instruments of transportation or communication in interstate commerce or by use of the mails,
3 directly or indirectly:

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

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

15 III.

16 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
17 permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment
18 Advisers Act of 1940 (the “Advisers Act”) [15 U.S.C. §§ 80b-6(1) and (2)], as an investment adviser,
19 by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- 20 (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or
- 21 (b) to engage in any transaction, practice, or course of business which operates as a fraud
22 or deceit upon any client or prospective client.

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

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$500,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$102,057.09. Defendant shall satisfy this obligation by paying \$602,057.09 to the Securities and Exchange Commission pursuant to the terms of the payment schedule set forth in Section V below after entry of this Final Judgment.

Defendant 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>. Defendant may also pay 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; David S. Lee as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

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

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment if Defendant fails to comply with the

1 terms of the payment schedule set forth in Section V below. Defendant shall pay postjudgment
2 interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

3 V.

4 Defendant shall pay the total of disgorgement and prejudgment interest due of \$602,057.09
5 according to the following schedule: (1) pursuant to the terms of the Order Confirming Plan of
6 Reorganization of Debtor David S. Lee (“Confirmation Order”) in bankruptcy case number 5:13-bk-
7 54056 AJ (N.D. Cal. Bankr.), payment of \$352,610.16 in 84 installments of \$4,197.74 per month
8 during the 90-month period covered by the Confirmation Order, beginning the 1st day of the 7th
9 month after the Effective Date of the Confirmation Order until the 1st day of the 90th month after the
10 Effective Date of the Confirmation Order; (2) payment of \$247,666.66 in 59 installments of
11 \$4,197.74 per month beginning the 1st day of the 91st month after the Effective Date of the
12 Confirmation Order until the 1st day of the 149th month after the Effective Date of the Confirmation
13 Order; and (3) the final payment of \$1,780.27 on the 1st day of the 150th month after the Effective
14 Date of the Confirmation Order.

15 If Defendant fails to make any payment by the date agreed and/or in the amount agreed
16 according to the schedule set forth above, all outstanding payments under this Final Judgment,
17 including postjudgment interest, minus any payments made, shall become due and payable
18 immediately at the discretion of the staff of the Commission without further application to the Court.

19 VI.

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

23 VII.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of
25 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the
26 allegations in the Complaint are true and admitted by Defendant, and further, any debt for
27 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final
28

1 Judgment or any other judgment, order, consent order, decree or settlement agreement entered in
2 connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws
3 or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the
4 Bankruptcy Code, 11 U.S.C. § 523(a)(19).

5 VIII.

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

8 IX.

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

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13 Dated: January 20, 2016



UNITED STATES DISTRICT JUDGE