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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 JERRY L. AUBREY, TIMOTHY J.
AUBREY, BRIAN S. CHERRY,
18 AARON M. GLASSER,

19 Defendants.

Case No. SACV 11-1564 JVS (RNBx)

**JUDGMENT OF PERMANENT
INJUNCTION AND OTHER RELIEF
AGAINST DEFENDANT BRIAN S.
CHERRY**

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1 Pursuant to Rule 55 of the Federal Rules of Civil Procedure, Plaintiff
2 Securities and Exchange Commission’s Application for Entry of Default Judgment
3 Against Defendant Brian S. Cherry came before this Court. The Court, having
4 considered all evidence and argument in connection with the Application, enters
5 the following Final Judgment:

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7 **I.**

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the
9 Securities and Exchange Commission’s Application for Entry of Default Judgment
10 Against Defendant Brian S. Cherry is GRANTED.

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12 **II.**

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

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

1 **III.**

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Cherry
3 and his agents, servants, employees, attorneys, and all persons in active concert or
4 participation with them who receive actual notice of this Final Judgment by
5 personal service or otherwise are permanently restrained and enjoined from
6 violating Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15
7 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or
8 instruments of transportation or communication in interstate commerce or by use
9 of the mails, directly or indirectly:

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

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18 **IV.**

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Cherry
20 and his agents, servants, employees, attorneys, and all persons in active concert or
21 participation with them who receive actual notice of this Final Judgment by
22 personal service or otherwise are permanently restrained and enjoined from
23 violating Section 5 of the Securities Act, 15 U.S.C. § 77e, by, directly or indirectly,
24 in the absence of any applicable exemption:

- 25 (a) Unless a registration statement is in effect as to a security, making use
26 of any means or instruments of transportation or communication in
27 interstate commerce or of the mails to sell such security through the
28 use or medium of any prospectus or otherwise;

- 1 (b) Unless a registration statement is in effect as to a security, carrying or
2 causing to be carried through the mails or in interstate commerce, by
3 any means or instruments of transportation, any such security for the
4 purpose of sale or for delivery after sale; or
- 5 (c) Making use of any means or instruments of transportation or
6 communication in interstate commerce or of the mails to offer to sell
7 or offer to buy through the use or medium of any prospectus or
8 otherwise any security, unless a registration statement has been filed
9 with the Commission as to such security, or while the registration
10 statement is the subject of a refusal order or stop order or (prior to the
11 effective date of the registration statement) any public proceeding or
12 examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

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14 **V.**

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Cherry
16 and his agents, servants, employees, attorneys, and all persons in active concert or
17 participation with them who receive actual notice of this Final Judgment by
18 personal service or otherwise are permanently restrained and enjoined from
19 violating, directly or indirectly, Section 15(a) of the Exchange Act, 15 U.S.C. §
20 78o(a), which makes it unlawful for any broker or dealer which is either a person
21 other than a natural person or a natural person, to make use of the mails or any
22 means or instrumentality of interstate commerce to effect any transactions in, or to
23 induce or attempt to induce the purchase or sale of, any security (other than an
24 exempted security or commercial paper, bankers' acceptances, or commercial bills)
25 unless such broker or dealer is registered in accordance with subsection (b) of
26 Section 15 of the Exchange Act, 15 U.S.C. § 78o(b).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Cherry is liable for disgorgement of \$337,450.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$107,077.93. Cherry shall also be liable to pay a civil penalty in the amount of \$337,450.00,¹ pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Cherry shall satisfy these obligations by paying a total of \$781,977.93 within ten business days to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, together with a cover letter identifying Cherry as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. By making this payment, Cherry relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Cherry. Cherry shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury. The Commission may enforce the Court's judgment for disgorgement, prejudgment interest, and civil penalty by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after ten days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, Cherry may assert any legally permissible defense.

VII.

¹ Awarding a third tier penalty, the Court approximates that Mr. Cherry's gross pecuniary gain as a result of his violations is equal to his ill-gotten gains. SEC v. Haligiannis, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007). This is a more favorable assessment for Mr. Cherry than awarding the statutory maximum of \$130,000 per violation, which would result in a \$390,000.00 award for the categories of violations alone, excluding the tally of violations per defrauded investor.


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

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5 **VIII.**

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

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11 Dated: February 03, 2012


HONORABLE JAMES V. SELNA
UNITED STATES DISTRICT JUDGE