

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

JAMES LI, et al.,

Defendants.

Case No. 11-cv-1712 (PHX-SRB)

**FINAL JUDGMENT BY DEFAULT
AGAINST DEFENDANT THOMAS
CHOW**

This matter came before this Court on the motion of plaintiff, Securities and Exchange Commission, seeking entry of a final judgment by default, providing it with the relief requested in its Complaint against Defendant Thomas Chow (“Defendant” or “Chow”) by reason of his failure to answer the Commission’s complaint, or otherwise appear in or defend this civil action. This Court having considered the pleadings and declarations on file herein makes the following findings of fact and conclusions of law:

1. The Commission’s complaint against Defendants was filed herein on August 30, 2011.
2. Defendant was served with the complaint, in accordance with Rule 4(f)(3) of the

1 Federal Rules of Civil Procedure, and as ordered by this Court, by the Commission on October
2 13, 2011.

3 3. Defendant has not filed an answer to the Complaint, nor has Defendant otherwise
4 appeared before this Court to defend in this cause.

5 4. Upon application of the Commission, the Clerk of this Court entered the default of
6 defendant Chow pursuant to Fed. R Civ. P. 55(a) on November 23, 2011.

7 5. Defendant is not an infant or incompetent. Defendant is not eligible for relief under
8 the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 et seq.].

9 6. The Court has personal jurisdiction over Defendant and the subject matter jurisdiction
10 over this action. Venue is proper in this district.

11 7. The allegations of the Commission's complaint as to Chow are, as to him, deemed
12 admitted.

13 8. The Commission is entitled to an order enjoining Defendant from committing future
14 violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)],
15 Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act"), [15
16 U.S.C. §§ 78j(b), 78m(b)(5)] and Rules 10b-5, 13b2-1 and 13b2-2 thereunder, [17 C.F.R. §§
17 240.10b-5, 240.13b2-1 and 240.13b2-2], and from aiding and abetting future violations of
18 Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b),
19 78m(a), 78m(b)(2)(A), 78m(b)(2)(B)] and Exchange Act Rules 10b-5(b), 12b-20, 13a-1, 13a-11,
20 and 13a-13. [17 C.F.R. §§ 240.12b-20 and 240.13a-1, 240.13a-11 and 240.13a-13].

21 9. The Commission is entitled to an order pursuant to Section 20(e) of the Securities Act
22 and Section 21(d)(2) of the Exchange Act, prohibiting Chow from acting as an officer or a
23 director of any issuer that has a class of securities registered pursuant to Section 12 of the
24 Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.
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1 10. It appears from the Declaration of the SEC's counsel that Chow was unjustly enriched
2 by the receipt of bonuses and the sale of certain shares of Syntax-Brilliant Corporation ("Syntax"),
3 stock, all as a result of the conduct described in the Complaint. The Commission is thus entitled to
4 an Order requiring defendant to disgorge an amount equal to the funds and benefits he obtained
5 illegally as a result of the violations alleged in the Complaint, plus prejudgment interest on that
6 amount.
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8 11. With respect to the Commission's request for a civil penalty pursuant to Section 20(d)
9 of the Securities Act and Section 21(d)(3) of the Exchange Act, it appears that Chow's violations,
10 as pleaded in the complaint, (a) involved fraud, deceit, manipulation, and a deliberate or reckless
11 disregard of regulatory requirements, and (b) directly or indirectly resulted in substantial losses to
12 Syntax investors or, at least, created a significant risk of substantial losses to investors of Syntax.
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14 12. The Commission is therefore entitled to an Order requiring defendant to pay civil
15 money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section
16 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].
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18 13. With respect to the Commission's request for an insider trading penalty pursuant to
19 Section 21A(a)(2) of the Exchange Act, it appears that Chow, as alleged in the complaint, sold
20 Syntax securities while in possession of material, non-public information concerning Syntax's
21 materially misstated financial statements.
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23 14. The Commission is therefore entitled to an Order requiring defendant to pay civil
24 money penalties pursuant to Section 21A(a)(2) of the Exchange Act [15 U.S.C. § 78u-1(a)(2)].
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26 On the basis of the foregoing findings of fact and conclusions of law, having considered
27 the pleadings and declarations on file herein, NOW THEREFORE:
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I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Commission's motion is GRANTED.

II.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, or aiding and abetting any violation of 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.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities

1 Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the
2 use of any means or instruments of transportation or communication in interstate commerce or by
3 use of the mails, 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
6 or any omission of a material fact necessary in order to make the statements
7 made, in light of the circumstances under which they were made, not misleading;
8 or
9 (c) to engage in any transaction, practice, or course of business which operates or
10 would operate as a fraud or deceit upon the purchaser.
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12 IV.

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
14 and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or
15 participation with them who receive actual notice of this Final Judgment by personal service or
16 otherwise are permanently restrained and enjoined from violating Section 13(b)(5) of the
17 Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1], directly or
18 indirectly, by knowingly circumventing or knowingly failing to implement a system of internal
19 accounting controls or knowingly falsifying or causing to be falsified any book, record, or
20 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].
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22 V.

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
24 and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or
25 participation with them who receive actual notice of this Final Judgment by personal service or
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1 otherwise are permanently restrained and enjoined from violating Rule 13b2-2 [17 C.F.R.
2 § 240.13b2-2], by, directly or indirectly,

- 3 (a) making or causing to be made a materially false or misleading statement, or
4 omitting to state or causing another person to omit to state, any material fact
5 necessary in order to make statements made, in light of the circumstances under
6 which such statements were made, not misleading, to an accountant in connection
7 with: (i) any audit, review or examination of the financial statements of an issuer,
8 or (ii) the preparation or filing of any document or report required to be filed with
9 the Commission;
- 10 (b) taking action, or directing another to take action, to coerce, manipulate, mislead, or
11 fraudulently influence any independent public or certified public accountant
12 engaged in the performance of an audit or review of an issuer's financial
13 statements required to be filed with the Commission, while knowing or while it
14 should have been known that such action, if successful, could result in rendering
15 the issuer's financial statements materially misleading.

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17 VI.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
19 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
20 participation with them who receive actual notice of this Final Judgment by personal service or
21 otherwise are permanently restrained and enjoined from aiding and abetting any violation of
22 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a),
23 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R.
24 §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13], promulgated thereunder, directly or
25 indirectly, by knowingly providing substantial assistance to an issuer having securities registered
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1 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or any issuer which is required to
2 file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)], by:

- 3 (a) filing or causing to be filed with the Commission any report required to be filed
4 with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C.
5 § 78m(a)] and the rules and regulations promulgated thereunder, which contains
6 any untrue statement of material fact, which omits to state any material fact
7 necessary in order to make the statements made, in light of the circumstances
8 under which they were made, not misleading, or which omits to disclose any
9 information required to be disclosed; or
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11 (b) failing to make and keep books, records, and accounts which, in reasonable detail,
12 accurately and fairly reflect the transactions and dispositions of the assets of the
13 issuer; or
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15 (c) failing to devise and maintain a system of internal accounting controls sufficient to
16 provide reasonable assurances that: (1) transactions are executed in accordance
17 with management's general or specific authorization; (2) transactions are recorded
18 as necessary (a) to permit preparation of financial statements in conformity with
19 generally accepted accounting principles (GAAP) or any other criteria applicable
20 to such statements and (b) to maintain accountability for assets; (3) access to assets
21 is permitted only in accordance with management's general or specific
22 authorization; and (4) the recorded accountability for assets is compared with the
23 existing assets at reasonable intervals and appropriate action is taken with respect
24 to any differences.
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VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$10,370,317.16, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$2,567,483.64, and a civil penalty in the amount of \$4,680,000.00 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)], and an insider trading penalty in the amount of [\$30,849,951.48] pursuant to Section 21A(a)(2) of the Exchange Act [15 U.S.C. § 78u-1(a)(2)]. The Defendant is thus liable for a total amount of [\$48,467,752.28]. 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. In response to any such civil contempt motion by the Commission, the defendant may assert any legally permissible defense. Payments under this paragraph shall be made to the Clerk of this Court, together with a cover letter identifying Thomas Chow 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. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By

1 making this payment, Defendant relinquishes all legal and equitable right, title, and interest in
2 such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-
3 judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

4 The Clerk shall deposit the funds into an interest bearing account with the Court Registry
5 Investment System (“CRIS”) or any other type of interest bearing account that is utilized by the
6 Court. These funds, together with any interest and income earned thereon (collectively, the
7 “Fund”), shall be held in the interest bearing account until further order of the Court. In
8 accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative
9 Office of the United States Courts, the Clerk is directed, without further order of this Court, to
10 deduct from the income earned on the money in the Fund a fee equal to ten percent of the income
11 earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the
12 United States.

13 The Commission may by motion propose a plan to distribute the Fund subject to the
14 Court’s approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair
15 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any
16 such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this
17 Judgment shall be treated as penalties paid to the government for all purposes, including all tax
18 purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or
19 reduction of any award of compensatory damages in any Related Investor Action based on
20 Defendant’s payment of disgorgement in this action, argue that he is entitled to, nor shall he
21 further benefit by, offset or reduction of such compensatory damages award by the amount of any
22 part of Defendant’s payment of a civil penalty in this action (“Penalty Offset”). If the court in
23 any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after
24 entry of a final order granting the Penalty Offset, notify the Commission’s counsel in this action
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1 and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the
2 Commission directs. Such a payment shall not be deemed an additional civil penalty and shall
3 not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes
4 of this paragraph, a "Related Investor Action" means a private damages action brought against
5 Defendant by or on behalf of one or more investors based on substantially the same facts as
6 alleged in the Complaint in this action.
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8 IX.

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.
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12 X.

13 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil
14 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.
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16 Dated this 12th day of January, 2012.

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19 Susan R. Bolton
20 United States District Judge
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