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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

PETER L. JENSEN AND THOMAS
C. TEKULVE, JR.,

Defendants.

Case No. CV 11-05316-R

**FINAL JUDGMENT AS TO
DEFENDANT THOMAS C.
TEKULVE, JR.**

The Securities and Exchange Commission (“SEC”) having filed a Complaint and Defendant Thomas C. Tekulve, Jr. (“Defendant”) 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

1 otherwise provided herein in paragraph XV); waived findings of fact and conclusions
2 of law; and waived any right to appeal from this Judgment:

3 **I.**

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
5 permanently restrained and enjoined from violating Section 17(a) of the Securities
6 Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any
7 security by the use of any means or instruments of transportation or communication
8 in interstate commerce or by use of the mails, directly or indirectly:

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

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

22 **II.**

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
24 is permanently restrained and enjoined from violating, directly or indirectly, Section
25 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §
26 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using
27 any means or instrumentality of interstate commerce, or of the mails, or of any
28 facility of any national securities exchange, in connection with the purchase or sale of

1 any security:

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

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as

9 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also

10 binds the following who receive actual notice of this Final Judgment by personal

11 service or otherwise: (a) Defendant's officers, agents, servants, employees, and

12 attorneys; and (b) other persons in active concert or participation with Defendant or

13 with anyone described in (a).

14 **III.**

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant

16 is permanently restrained and enjoined from violating, directly or indirectly, Section

17 13(a) of the Exchange Act [15 U.S.C. § 78t(a)], and Rules 12b-20, 13a-1 and 13a-13

18 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13] [15 U.S.C. §

19 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by filing

20 with the Commission required periodic reports that fail to include material

21 information necessary to make the required statements, in light of the circumstances

22 under which they were made, not misleading.

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as

24 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also

25 binds the following who receive actual notice of this Final Judgment by personal

26 service or otherwise: (a) Defendant's officers, agents, servants, employees, and

27 attorneys; and (b) other persons in active concert or participation with Defendant or

28 with anyone described in (a).

1 **IV.**

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
3 is permanently restrained and enjoined from violating, directly or indirectly, Section
4 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)] and Rule 13b2-1 thereunder
5 [17 C.F.R. §240.13b2-1], by knowingly falsifying books, records and accounts
6 issuers are required to make and keep, in reasonable detail, that accurately and fairly
7 reflect the issuer's transactions and dispositions of its assets, and by directly or
8 indirectly falsifying or causing to be falsified issuers' books, records and accounts.

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

15 **V.**

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
17 is permanently restrained and enjoined from violating, directly or indirectly, Rule
18 13b2-2 [17 C.F.R. § 240.13b2-2], by

19 a. making or causing to be made materially false or misleading statements
20 to accountants in connection with; or

21 b. omitting to state, or causing another person to omit to state, material
22 facts necessary in order to make statements made, in light of the circumstances under
23 which such statements were made, not misleading, to accountants in connection with:

24 i. an audit, review or examination of the financial statements
25 of the issuer required to be made; or

26 ii. the preparation or filing of a document or report required to
27 be filed with the Commission.
28

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

7 **VI.**

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
9 is permanently restrained and enjoined from violating, directly or indirectly, Rule
10 13a-14 [17 C.F.R. § 240.13a-14], by falsely certifying that an issuer's annual and
11 quarterly reports fully comply with the requirements of the Exchange Act and fairly
12 present, in all material respects, the financial condition and results of operations of
13 the company, when, in fact, the reports contain untrue statements of material fact and
14 omit material information necessary to make the reports not misleading

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

21 **VII.**

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
23 is permanently restrained and enjoined from violating, directly or indirectly, Section
24 304(a) of the Sarbanes-Oxley Act of 2002 by failing to reimburse an issuer for any
25 bonus or other incentive-based compensation and any profits realized from the sale of
26 the issuer's securities during the 12-month period following the first public issuance
27 or filing with the Commission of any financial document, for which an issuer is
28 required to prepare an accounting restatement due to the material noncompliance of

1 the issuer, as a result of misconduct, with any financial reporting requirement under
2 the securities laws.

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

9 **VIII.**

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
11 is permanently restrained and enjoined from, directly or indirectly, controlling any
12 person who violates Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and
13 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Section 13(a) of the Exchange Act
14 [15 U.S.C. § 78t(a)], and Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§
15 240.12b-20, 240.13a-1 and 240.13a-13], unless Defendant acts in good faith and does
16 not directly or indirectly induce the act or acts constituting the violation.

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

23 **IX.**

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
25 is permanently restrained and enjoined from aiding and abetting any violation of
26 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder
27 [17 C.F.R. § 240.10b-5], Section 13(a) of the Exchange Act [15 U.S.C. § 78t(a)], and
28 Rules 12b-20, 13a-1 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and

1 240.13a-13], Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] by knowingly
2 or recklessly providing substantial assistance to an issuer's violation of the aforesaid
3 provisions.

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

10 **X.**

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant
12 to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and/or Section 20(e)
13 of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited for one (1) year
14 following the date of entry of this Final Judgment, from acting as an officer or
15 director of any issuer that has a class of securities registered pursuant to Section 12 of
16 the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to
17 Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

18 **XI.**

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
20 shall pay a civil penalty in the amount of \$130,000.00 to the Securities and Exchange
21 Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and
22 Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall make
23 this payment pursuant to the terms of the payment schedule set forth in paragraph XII
24 below after entry of this Final Judgment.

25 Defendant may transmit payment electronically to the Commission, which will
26 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also
27 be made directly from a bank account via Pay.gov through the SEC website at
28 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified

1 check, bank cashier's check, or United States postal money order payable to the
2 Securities and Exchange Commission, which shall be delivered or mailed to
3 Enterprise Services Center
4 Accounts Receivable Branch
5 6500 South MacArthur Boulevard
6 Oklahoma City, OK 73169

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

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

17 **XII.**

18 Defendant shall pay the civil penalty of \$130,000.00 in four (4) installment
19 payments to the Commission according to the following schedule: (1) \$50,000,
20 within fourteen (14) of days of entry of this Final Judgment; (2) \$27,000, within 90
21 days of the entry of Final Judgment; (3) \$27,000, within 180 days of entry of the
22 Final Judgment, and (4) \$26,000 within 270 days of the entry of Final Judgment.
23 Payments shall be deemed made on the date they are received by the Commission and
24 shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C. §
25 1961 on any unpaid amounts due after 14 days of the entry of Final Judgment. Prior
26 to making the final payment set forth herein, Defendant shall contact the staff of the
27 Commission for the amount due for the final payment.
28

1 If Defendant fails to make any payment by the date agreed and/or in the
2 amount agreed according to the schedule set forth above, all outstanding payments
3 under this Final Judgment, including post-judgment interest, minus any payments
4 made, shall become due and payable immediately at the discretion of the staff of the
5 Commission without further application to the Court.

6 **XIII.**

7 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
8 shall reimburse BWI Liquidating Trust \$1,200.00 pursuant to Section 304 of the
9 Sarbanes-Oxley Act of 2002, 15 U.S.C. 7243(a) within fourteen (14) of days of entry
10 of this Final Judgment. Defendant may transmit payment electronically to BWI
11 Liquidating Trust, c/o Walker Truesdell Roth & Associates, which will provide
12 detailed ACH transfer/Fedwire instructions upon request. The payment shall be
13 accompanied by a letter identifying Thomas C. Tekulve, Jr. as a defendant in this
14 action; setting forth the title and civil action number of this actions and the name of
15 this Court; and specifying that payment is made pursuant to this Final Judgment.
16 Defendant shall simultaneously transmit photocopies of such payment and letter to
17 the Commission's counsel in this action. By making this payment, Defendant
18 relinquishes all legal and equitable right, title, and interest in such funds, and no part
19 of the funds shall be returned to Defendant.

20 **XIV.**

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

25 **XV.**

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
27 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
28 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant,

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

7 **XVI.**

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

11 **XVII.**

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

15
16 Dated: September 12, 2017



17
18 UNITED STATES DISTRICT JUDGE