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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE COMMISSION,
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14 Plaintiff,

15 vs.

16 GLR CAPITAL MANAGEMENT, LLC,
CHRISTOPHER A. LUCK and KEITH E. RODE

17 Defendants

18 and

19 GLR GROWTH FUND, L.P.,

20 Relief Defendant.
21

Case No. CV12-2663 (EJD)

**[PROPOSED] FINAL
JUDGMENT AS TO
DEFENDANT KEITH E. RODE**

1 The Securities and Exchange Commission (“Commission”) having filed a Complaint and
2 Defendant Keith E. Rode (“Defendant”) having entered a general appearance; consented to the
3 Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this
4 Final Judgment as to Defendant Keith E. Rode (“Final Judgment”); waived findings of fact and
5 conclusions of law; and waived any right to appeal from this Final Judgment:

6 I.

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant’s
8 agents, servants, employees, attorneys, and all persons in active concert or participation with them
9 who receive actual notice of this Final Judgment by personal service or otherwise are permanently
10 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities
11 Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R.
12 § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any
13 facility of any national securities exchange, in connection with the purchase or sale of any security:

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

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

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

20 II.

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and
22 Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation
23 with them who receive actual notice of this Final Judgment by personal service or otherwise are
24 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 [15
25 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of
26 transportation or communication in interstate commerce or by use of the mails, directly or indirectly:
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- 1 (a) to employ any device, scheme, or artifice to defraud;
- 2 (b) to obtain money or property by means of any untrue statement of a material fact or any
- 3 omission of a material fact necessary in order to make the statements made, in light of
- 4 the circumstances under which they were made, not misleading; or
- 5 (c) to engage in any transaction, practice, or course of business which operates or would
- 6 operate as a fraud or deceit upon the purchaser.

7 III.

8 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and
9 Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation
10 with them who receive actual notice of this Final Judgment by personal service or otherwise are
11 permanently restrained and enjoined from violating Section 206(4) of the Investment Advisers Act of
12 1940 [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] by, while
13 acting as an investment adviser, using the mails or any means or instrumentality of interstate
14 commerce:

- 15 (a) engaging in any act, practice, or course of business which is fraudulent, deceptive, or
- 16 manipulative; or
- 17 (b) while acting as an investment adviser to a pooled investment vehicle:
 - 18 (1) making any untrue statement of a material fact or omitting to state a material fact
 - 19 necessary to make the statements made, in the light of the circumstances under
 - 20 which they were made, not misleading, to any investor or prospective investor in
 - 21 the pooled investment vehicle; or
 - 22 (2) otherwise engaging in any act, practice, or course of business that is fraudulent,
 - 23 deceptive, or manipulative with respect to any investor or prospective investor in
 - 24 the pooled investment vehicle.

25 IV.

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and
27 Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation
28 with them who receive actual notice of this Final Judgment by personal service or otherwise are

1 permanently restrained and enjoined from violating Section 26 of the Exchange Act [15 U.S.C.
2 § 78z] by making or causing to be made, to any prospective purchaser or seller of a security any
3 representation that any action or failure to act by the Commission or the Board of Governors of the
4 Federal Reserve System, in the administration of the Exchange Act shall be construed to mean that
5 the particular authority has in any way passed upon the merits of, or given approval to, any security
6 or any transaction or transactions therein, or any action or failure to act with regard to any statement
7 or report filed with or examined by such authority pursuant to the Exchange Act or rules and
8 regulations thereunder, be deemed a finding by such authority that such statement or report is true
9 and accurate on its face or that it is not false or misleading.

10 V.

11 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
12 liable for disgorgement of \$152,050.00, together with prejudgment interest thereon in the amount of
13 \$25,264.53, for a total of \$177,314.53. Defendant shall satisfy this obligation by paying \$177,314.53
14 to the Securities and Exchange Commission (“Commission”) within 14 days after entry of a
15 judgment against Defendant in *United States v. Keith Rode*, Crim. No. 12-CR-00888 EJD (the
16 “Criminal Case”). Defendant’s payment of disgorgement and prejudgment interest shall be deemed
17 satisfied upon the entry of an order requiring Defendant to pay restitution and/or forfeiture of
18 \$177,314.53 or more in the Criminal Case. If Defendant is not ordered to pay restitution and/or
19 forfeiture of \$177,314.53 or more in the Criminal Case and Defendant makes payment pursuant to an
20 order entered against him in the Criminal Case, upon presentation to the Commission’s counsel of
21 satisfactory evidence of such payment, Defendant shall receive a dollar-for-dollar credit against the
22 amount then owed to the Commission pursuant to this Final Judgment.

23 Defendant may transmit payment electronically to the Commission, which will provide
24 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a
25 bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>.
26 Defendant may also pay by certified check, bank cashier’s check, or United States postal money
27 order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:
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1 Enterprise Services Center
2 Accounts Receivable Branch
3 6500 South MacArthur Boulevard
4 Oklahoma City, OK 73169

5 and shall be accompanied by a letter identifying the case title, civil action number, and name of this
6 Court; Keith E. Rode as a defendant in this action; and specifying that payment is made pursuant to
7 this Final Judgment.

8 Defendant shall simultaneously transmit photocopies of evidence of payment and case
9 identifying information to the Commission's counsel in this action. By making this payment,
10 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the
11 funds shall be returned to Defendant.

12 The Commission shall hold the funds (collectively, the "Fund") and may propose a plan to
13 distribute the Fund, subject to the Court's approval. The Court shall retain jurisdiction over the
14 administration of any distribution of the Fund. If the Commission staff determines that the Fund will
15 not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the
16 United States Treasury.

17 The Commission may enforce the Court's judgment for disgorgement and prejudgment
18 interest by moving for civil contempt (and/or through other collection procedures authorized by law)
19 at any time after 14 days following entry of a judgment against the Defendant in the Criminal Case.
20 Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

21 VI.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions
23 to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the
24 Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment
25 interest, civil penalty or other amounts due by Defendant under this Judgment or any other judgment,
26 order, consent order, decree or settlement agreement entered in connection with this proceeding, is a
27 debt for the violation by Defendant of the federal securities laws or any regulation or order issued
28 under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

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VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Keith E. Rode is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.


VIII.

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

IX.

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

Dated: 6/10, 2015



EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE