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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LEE COLE, et al.,

Defendants.

12 Civ. 8167 (RJS)

ECF Case

FINAL JUDGMENT AS TO DEFENDANTS LEE COLE AND LINDEN BOYNE

WHEREAS, plaintiff Securities and Exchange Commission (the "Commission") commenced this action by filing a Complaint on November 8, 2012, alleging that Defendants Lee Cole ("Cole") and Linden Boyne ("Boyne") violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (the "Securities Act"); Sections 10(b), 13(b)(5), 13(d), and 16(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 13d-1, 13d-2, 16a-2, and 16a-3 thereunder; and Section 304 of the Sarbanes-Oxley Act of 2002, that Cole and Boyne were liable pursuant to Section 20(e) of the Exchange Act for aiding and abetting violations of Sections 10(b), 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder; and that Cole and Boyne were liable as control persons pursuant to Section 20(a) of the Exchange Act for violations of Sections 10(b), 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder;

WHEREAS, during discovery in this action, Cole and Boyne failed to comply with five Court Orders, including one to appear for a deposition and one to pay sanctions totaling \$1,500.00;

WHEREAS, on August 6, 2013, the Court held a hearing to address whether default

judgment should be entered against Cole and Boyne and Cole and Boyne did not appear at the hearing;

WHEREAS, on August 8, 2013, the Court entered default judgment in favor of the Commission with respect to Cole's and Boyne's liability for the violations alleged against them in the Complaint and listed above;

WHEREAS, on October 1, 2013, the Commission filed a motion and memorandum of law seeking relief based upon Cole's and Boyne's liability for those violations, including civil fines, permanent injunctions, and either disgorgement or reimbursement;

WHEREAS, on or about October 8, 2013, Cole and Boyne submitted responses to the Commission's motion and the Commission submitted a reply on October 10, 2013; and

WHEREAS, on September 22, 2014, the Court issued an Opinion and Order granting the Commission's motion for penalties and remedies, ordering that Cole and Boyne be jointly and severally liable for \$12,345,908.74 in disgorgement and prejudgment interest thereon in the amount of \$2,324,842.25, ordering that Cole and Boyne each be liable for a \$7,500,000.00 civil fine pursuant to 15 §§ U.S.C. 77t(d)(2)(C) and 78u(d)(3)(B)(iii), and ordering that Cole and Boyne be enjoined permanently from violating the securities laws, serving as officers or directors of any public company, and participating in any activities involving the offer of penny stocks;

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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, Section 10(b) of 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.

II.

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

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or

would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

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

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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 13(d) of the Exchange Act [15 U.S.C. § 78m(d)] and Rules 13d-1 and 13d-2 thereunder [17 C.F.R. §§ 240.13d-1 and 240.13d-2] including by, while directly or indirectly a beneficial owner of more than five percent of the outstanding shares of a class of voting equity securities registered under the Exchange Act, failing to file a Schedule 13D within ten days of the date on which their ownership exceeds five percent or failing to notify the issuer and the Commission of any material increases or decreases in the percentage of beneficial ownership by filing an amended Schedule 13D.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rules 16a-2 and 16a-3 thereunder [17 C.F.R. §§ 240.16a-2 and 240.16a-3] by, while acting as a director or officer of an issuer of securities registered under the Exchange Act, failing to timely and accurately file Forms 3, 4, and 5 with the Commission disclosing information about their holdings and trading in the issuer's securities.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rules 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2] by, directly or indirectly:

- (a) knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying a book, record, or account identified in Exchange Act Section 13(b)(2) [15 U.S.C. § 78m(b)(2)];
- (b) falsifying or causing to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]; or
- (c) while acting as a director or officer of an issuer,
 - (1) making, or causing to be made, a materially false or misleading statement or omission to an accountant in connection with; or
 - (2) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with:
 - a. any audit, review or examination of the financial statements of the issuer specified in Exchange Act Rule 13b2-2(a)(2)(i) [17 C.F.R. § 240.13b2-2(a)(2)(i)]; or
 - b. the preparation or filing of any document or report required to be filed with the Commission; or
 - (3) taking any action to coerce, manipulate, mislead, or fraudulently influence any independent public or certified public accountant engaged in the

performance of an audit or review of the financial statements of that issuer that are required to be filed with the Commission if that person knew or should have known that such action, if successful, could result in rendering the issuer's financial statement material misleading.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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 Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14] by, while acting as a principal executive or principal financial officer of an issuer, failing to provide a certification required by that rule.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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 aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] by knowingly providing substantial assistance to an issuer of registered securities that fails to file with the Commission statements or reports required by Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder that are factually accurate or that fails to add to those statements or reports, in addition to the information expressly required to be included in those statements or reports, such

further material information as may be necessary to make the required statements in the light of the circumstances under which they are made not misleading.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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, directly or indirectly, controlling any issuer of registered securities which violates Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] or Rule 12b-20, 13a-1 or 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, or 240.13a-13] by failing to file with the Commission statements or reports required by Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder that are factually accurate or by failing to add to those statements or reports, in addition to the information expressly required to be included in those statements or reports, such further material information as may be necessary to make the required statements in the light of the circumstances under which they are made not misleading, unless Cole or Boyne acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

X.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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 aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by knowingly providing substantial assistance to an issuer with a class of securities registered pursuant to Section 12 of

the Exchange Act or required to file reports pursuant to Section 15(d) of the Exchange Act that fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

XI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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, directly or indirectly, controlling any issuer with a class of securities registered pursuant to Section 12 of the Exchange Act or required to file reports pursuant to Section 15(d) of the Exchange Act that violates Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by failing to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer, unless Cole or Boyne acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

XII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole, Boyne, and their 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 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243] by, while serving as the chief executive officer or chief financial officer of an issuer required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, failing to reimburse the issuer for:

- (a) any bonus or other incentive-based or equity-based compensation he received from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and
- (b) any profits realized from the sale of securities of the issuer during that 12-month period.

XIII.

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)], Cole and Boyne are each 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)].

XIV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole and Boyne are each permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

XV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Cole and Boyne are jointly and severally liable for disgorgement of \$12,345,908.74, representing profits

gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$2,324,842.25. In addition, Cole and Boyne are each liable for a civil penalty in the amount of \$7,500,000.00 pursuant to 15 U.S.C. §§ 77t(d)(2)(C) and 78U(d)(3)(B)(iii). Cole and Boyne shall satisfy these obligations by paying these amounts to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Cole and Boyne 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>. Cole and Boyne 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; identifying himself by name as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

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

The Commission shall hold the funds (collectively, the "Fund") and may propose a plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the

administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, 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. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.


XVI.

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.

XVII.

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: October 8, 2014
 New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE