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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 SECURITIES AND EXCHANGE COMMISSION,  
12 Plaintiff,  
13 v.  
14 JOHN GRAY, CHRISTIAN KELLER,  
KYLE MARTIN, and AARON SHEPARD,  
15 Defendants.

Case No. C-15-551

**~~PROPOSED~~ FINAL JUDGMENT AS TO  
DEFENDANT JOHN GRAY**

16  
17 The Securities and Exchange Commission having filed a Complaint and Defendant John Gray  
18 having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the  
19 subject matter of this action; consented to entry of this Final Judgment without admitting or denying  
20 the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in  
21 Paragraph V); waived findings of fact and conclusions of law; and waived any right to appeal from  
22 this Final Judgment:

23 I.

24 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant’s  
25 agents, servants, employees, attorneys, and all persons in active concert or participation with them  
26 who receive actual notice of this Final Judgment by personal service or otherwise are permanently  
27 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities  
28 Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated

1 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or  
2 of the mails, or of any facility of any national securities exchange, in connection with the purchase or  
3 sale of any security:

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

10 II.

11 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
12 Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation  
13 with them who receive actual notice of this Final Judgment by personal service or otherwise are  
14 permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C.  
15 § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any  
16 tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or  
17 manipulative act or practice, by:

- 18 (a) purchasing or selling or causing to be purchased or sold the securities sought or to be  
19 sought in such tender offer, securities convertible into or exchangeable for any such  
20 securities or any option or right to obtain or dispose of any of the foregoing securities  
21 while in possession of material information relating to such tender offer that  
22 Defendant knows or has reason to know is nonpublic and knows or has reason to know  
23 has been acquired directly or indirectly from the offering person; the issuer of the  
24 securities sought or to be sought by such tender offer; or any officer, director, partner,  
25 employee or other person acting on behalf of the offering person or such issuer, unless  
26 within a reasonable time prior to any such purchase or sale such information and its  
27 source are publicly disclosed by press release or otherwise; or  
28

1 (b) communicating material, nonpublic information relating to a tender offer, which  
2 Defendant knows or has reason to know is nonpublic and knows or has reason to know  
3 has been acquired directly or indirectly from the offering person; the issuer of the  
4 securities sought or to be sought by such tender offer; or any officer, director, partner,  
5 employee, advisor, or other person acting on behalf of the offering person of such  
6 issuer, to any person under circumstances in which it is reasonably foreseeable that  
7 such communication is likely to result in the purchase or sale of securities in the  
8 manner described in subparagraph (a) above, except that this paragraph shall not apply  
9 to a communication made in good faith

10 (i) to the officers, directors, partners or employees of the  
11 offering person, to its advisors or to other persons, involved  
12 in the planning, financing, preparation or execution of such  
13 tender offer;

14 (ii) to the issuer whose securities are sought or to be sought by  
15 such tender offer, to its officers, directors, partners,  
16 employees or advisors or to other persons involved in the  
17 planning, financing, preparation or execution of the  
18 activities of the issuer with respect to such tender offer; or

19 (iii) to any person pursuant to a requirement of any statute or  
20 rule or regulation promulgated thereunder.

21 III.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for  
23 disgorgement of \$287,487.55, representing profits gained as a result of the conduct alleged in the  
24 Complaint, together with prejudgment interest thereon in the amount of \$21,836.88, and a civil  
25 monetary penalty of \$448,876.03. Defendant shall satisfy this obligation by paying \$758,200.46 to  
26 the Securities and Exchange Commission pursuant to the terms of the payment schedule set forth in  
27 Section IV below after entry of this Final Judgment.  
28

1 Defendant may transmit payment electronically to the Commission, which will provide  
2 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from  
3 a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>.  
4 Defendant may also pay by certified check, bank cashier's check, or United States postal money  
5 order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

6 Enterprise Services Center  
7 Accounts Receivable Branch  
8 6500 South MacArthur Boulevard  
9 Oklahoma City, OK 73169

10 and shall be accompanied by a letter identifying the case title, civil action number, and name of this  
11 Court; John Gray as a defendant in this action; and specifying that payment is made pursuant to this  
12 Final Judgment.

13 Defendant shall simultaneously transmit photocopies of evidence of payment and case  
14 identifying information to the Commission's counsel in this action. By making the payment,  
15 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the  
16 funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this  
17 Final Judgment to the United States Treasury.

18 The Commission may enforce the Court's judgment for disgorgement and prejudgment  
19 interest by moving for civil contempt (and/or through other collection procedures authorized by law)  
20 at any time after 14 days following entry of this Final Judgment if Defendant fails to comply with the  
21 terms of the payment schedule set forth in Section IV below. Defendant shall pay post-judgment  
22 interest on any unpaid amounts of disgorgement, prejudgment interest, and penalty due after 14 days  
23 of the entry of Final Judgment pursuant to 28 U.S.C. § 1961.

24 IV.

25 Gray shall pay the total of disgorgement, prejudgment interest, and penalty due of  
26 \$758,200.46, plus post-judgment interest, in five installments to the Commission according to the  
27 following schedule: (1) \$379,100.23, within 14 days of entry of this Final Judgment; (2) \$94,775.06,  
28 within 90 days of entry of this Final Judgment; (3) \$94,775.06, within 180 days of entry of this Final

1 Judgment; (4) \$94,775.06, within 270 days of entry of this Final Judgment; and (5) \$94,775.05, plus  
2 all additional outstanding amounts due to the accrual of post-judgment interest on unpaid amounts,  
3 within 360 days of entry of this Final Judgment. Payments shall be deemed made on the date they  
4 are received by the Commission and shall be applied first to post-judgment interest, which accrues  
5 pursuant to 28 U.S.C. § 1961 on any unpaid amounts of disgorgement, prejudgment interest, and  
6 penalty due after 14 days of the entry of Final Judgment. Prior to making the final payment set forth  
7 herein, Gray shall contact the staff of the Commission for the total amount due for the final payment.

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

12 V.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions  
14 to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the  
15 complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment  
16 interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other  
17 judgment, order, consent order, decree or settlement agreement entered in connection with this  
18 proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or  
19 order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C.  
20 §523(a)(19).

21 VI.

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

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VII.

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: March 2, 2015, \_\_\_\_\_

  
UNITED STATES DISTRICT JUDGE