

1 JINA L. CHOI (NY Bar No. 2699718)
2 STEVEN BUCHHOLZ (Cal. Bar No. 202638)
3 JENNIFER J. LEE (Cal. Bar No. 261399)
Leejen@sec.gov

4 Attorneys for Plaintiff
5 SECURITIES AND EXCHANGE COMMISSION
6 44 Montgomery Street, Suite 2800
San Francisco, California 94104
Telephone: (415) 705-2500
Facsimile: (415) 705-2501

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 SECURITIES AND EXCHANGE COMMISSION, Case No. C- 15-551

12 Plaintiff,

13 v.

14 JOHN GRAY, CHRISTIAN KELLER,
15 KYLE MARTIN, and AARON SHEPARD,

16 Defendants.

**~~PROPOSED~~ FINAL JUDGMENT AS TO
DEFENDANT CHRISTIAN KELLER**

17 The Securities and Exchange Commission having filed a Complaint and Defendant Christian
18 Keller having entered a general appearance; consented to the Court’s jurisdiction over Defendant and
19 the subject matter of this action; consented to entry of this Final Judgment without admitting or
20 denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided
21 herein in Paragraph VI); waived findings of fact and conclusions of law; and waived any right to
22 appeal from 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, pursuant to Section
23 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] Defendant is prohibited for 10 years, following
24 the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a
25 class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is
26 required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].
27
28

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$52,000.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$4,002.30, and a civil monetary penalty of \$417,468.73. Defendant shall satisfy this obligation by paying \$473,471.03 to the Securities and Exchange Commission pursuant to the terms of the payment schedule set forth in paragraph V below after entry of this Final Judgment.

Defendant 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>. Defendant 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; Christian Keller as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. 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 if Defendant fails to comply with the terms of the payment schedule set forth in paragraph V below. Defendant shall pay post judgment

1 interest on any unpaid amounts of disgorgement, prejudgment interest, and penalty due after 14 days
2 of the entry of Final Judgment pursuant to 28 U.S.C. § 1961.

3 V.

4 Keller shall pay the total of disgorgement, prejudgment interest, and penalty due of
5 \$473,471.03, plus post-judgment interest, in five installments to the Commission according to the
6 following schedule: (1) \$15,000, within 14 days of entry of this Final Judgment; (2) \$5,000, within
7 90 days of entry of this Final Judgment; (3) \$5,000, within 180 days of entry of this Final Judgment;
8 (4) \$5,000, within 270 days of entry of this Final Judgment; and (5) \$443,471.03, plus all additional
9 outstanding amounts due to the accrual of post-judgment interest on unpaid amounts, within 360 days
10 of entry of this Final Judgment. Payments shall be deemed made on the date they are received by the
11 Commission and shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C.
12 § 1961 on any unpaid amounts of disgorgement, prejudgment interest, and penalty due after 14 days
13 of the entry of Final Judgment. Prior to making the final payment set forth herein, Keller shall
14 contact the staff of the Commission for the total amount due for the final payment.

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

19 VI.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII.

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.

VIII.

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