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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 KYLE MARTIN**

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17 The Securities and Exchange Commission having filed a Complaint and Defendant Kyle
18 Martin 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
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(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

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

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

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

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$243,276.10, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$21,404.28. Defendant shall satisfy this obligation by paying \$264,680.38 to the Securities and Exchange Commission pursuant to the terms of the payment schedule set forth in paragraph IV below.

Defendant may transmit payment electronically to the Commission, which will provide

1 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from
2 a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>.
3 Defendant may also pay by certified check, bank cashier's check, or United States postal money
4 order payable to the Securities and Exchange Commission, which shall be delivered or mailed to
5 Enterprise Services Center
6 Accounts Receivable Branch
7 6500 South MacArthur Boulevard
8 Oklahoma City, OK 73169
9 and shall be accompanied by a letter identifying the case title, civil action number, and name of this
10 Court; Kyle Martin as a defendant in this action; and specifying that payment is made pursuant to this
11 Final Judgment.

12 Defendant shall simultaneously transmit photocopies of evidence of payment and case
13 identifying information to the Commission's counsel in this action. By making this payment,
14 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the
15 funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this
16 Final Judgment to the 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 this Final Judgment if Defendant fails to comply with the
20 terms of the payment schedule set forth in paragraph IV below. Defendant shall pay post-judgment
21 interest on any unpaid amounts of disgorgement, prejudgment interest, and penalty due after 14 days
22 of the entry of Final Judgment pursuant to 28 U.S.C. § 1961.

23 IV.

24 Defendant shall pay the total of disgorgement and prejudgment interest, due of \$264,680.38,
25 plus post-judgment interest, in five installments to the Commission according to the following
26 schedule: (1) \$5,000, within 5 days of entry of this Final Judgment; (2) \$5,000, within 90 days of
27 entry of this Final Judgment; (3) \$5,000 within 180 days of entry of this Final Judgment; (4) \$5,000,
28 within 270 days of entry of this Final Judgment; and (5) \$244,680.38, plus all additional outstanding
amounts due to the accrual of post-judgment interest on unpaid amounts, within 360 days of entry of

1 this Final Judgment. Payments shall be deemed made on the date they are received by the
2 Commission and shall be applied first to post-judgment interest, which accrues pursuant to 28 U.S.C.
3 § 1961 on any unpaid amounts of disgorgement, prejudgment interest, and penalty due after 14 days
4 of the entry of Final Judgment. Prior to making the final payment set forth herein, Kyle Martin shall
5 contact the staff of the Commission for the total amount due for the final payment.

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

10 V.

11 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on
12 Defendant’s cooperation in a Commission investigation and/or related enforcement action, the Court
13 is not ordering Defendant to pay a civil penalty of \$243,276.10. If at any time following the entry of
14 the Final Judgment the Commission obtains information indicating that Defendant knowingly
15 provided materially false or misleading information or materials to the Commission or in a related
16 proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant,
17 petition the Court for an order requiring Defendant to pay a civil penalty. In connection with any
18 such petition and at any hearing held on such a motion: (a) Defendant will be precluded from
19 arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant
20 may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the
21 allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed
22 true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of
23 affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary
24 evidence without regard to the standards for summary judgment contained in Rule 56(c) of the
25 Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery,
26 including discovery from appropriate non-parties.

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VI.

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

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