

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:15-cv-62028-CIV-DIMITROULEAS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RICHARD E. GATHRIGHT,  
MICHAEL S. SHORE,  
LAURA P. MESSENBAUGH, and  
ROBERT W. BEARD,

Defendants.

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**ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
MOTION FOR A FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER  
RELIEF AGAINST DEFENDANT ROBERT W. BEARD**

This cause comes before the Court upon the Motion by Plaintiff Securities and Exchange Commission for a Final Judgment of Permanent Injunction and Other Relief against Defendant Robert W. Beard (“Beard”) (“Motion for Final Judgment”). The Court finds that good cause exists for the Court to grant the Commission’s Motion for Final Judgment. The Commission having filed a Complaint and Defendant Beard having entered a general appearance; consented to the Court’s jurisdiction over him and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein); waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and Defendant Beard has agreed to the entry of this Final Judgment of Permanent Injunction and Other Relief (“Final Judgment of Permanent Injunction”). Accordingly, the motion is **GRANTED**, and the Court hereby orders as follows:

I.

**PERMANENT INJUNCTION**

**A. Section 17(a) of the Securities Act**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Beard is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (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;

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person about the price or trading market for any security, or (ii) making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) any of Defendant Beard’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Beard or with anyone described in (a).

**B. Section 10(b) and Rule 10b-5 of the Exchange Act**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant Beard is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (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;

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person about the price or trading market for any security, or (ii) making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) any of Defendant Beard’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Beard or with anyone described in (a).

**C. Rule 13b2-1 of the Exchange Act**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Beard is permanently restrained and enjoined from, directly or indirectly, falsifying or causing to be falsified any books, records or accounts subject to Section 13(b)(2) of the Exchange Act.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraphs also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) any of Defendant Beard's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Beard or with anyone described in (a).

**D. AIDING AND ABETTING VIOLATIONS OF SECTION 13(b)(2)(A) OF THE EXCHANGE ACT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Beard is permanently restrained and enjoined from, directly or indirectly, that 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, or acting severely recklessly, providing substantial assistance to an issuer that fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions of the issuer.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraphs also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) any of Defendant Beard's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Beard or with anyone described in (a).

**E. AIDING AND ABETTING VIOLATIONS OF SECTION 13(b)(2)(B) OF THE EXCHANGE ACT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Beard is permanently restrained and enjoined from, directly or indirectly, that aiding and abetting any violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by knowingly, or acting severely recklessly, providing substantial assistance to an issuer that fails to devise and maintain a system of internal accounting controls sufficient to reasonably assure that transactions were recorded and financial statements were prepared in conformity with Generally Accepted Accounting Principles.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraphs also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) any of Defendant Beard's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Beard or with anyone described in (a).

**II.**

**DISGORGEMENT, PREJUDGMENT INTEREST THEREON & CIVIL PENALTY**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is liable for disgorgement of \$20,447, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$2,694, for a total of \$23,141. Based on Defendant's sworn representations in his Statement of Financial Condition dated December 3, 2015, and other documents and information, submitted to the Commission, however, the Court is not ordering Defendant to pay a civil penalty and payment of all but \$10,000 of the disgorgement and pre-judgment interest thereon is waived. The determination not to impose a civil penalty and to waive payment of all but \$10,000 of the

disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition dated December 3, 2015. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense. Defendant shall also pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

Defendant Beard shall satisfy this obligation by paying \$10,000 to the Securities and Exchange Commission that he has escrowed within 14 days after entry of this Final Judgment. Defendant or his agent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made by the Defendant or his agent directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant or his agent 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; Beard 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, Christopher E. Martin, 801 Brickell Ave., Suite 1800, Miami, FL 33131. 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 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.

If full payment is not made, 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.

### **III.**

#### **OFFICER AND DIRECTOR BAR**

**IT IS HEREBY 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)], Defendant Beard is permanently barred 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)].

### **IV.**

#### **BANKRUPTCY NONDISCHARGEABILITY**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that solely 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 Beard, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by either of them under this 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 Beard 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).

**V.**

**INCORPORATION OF THE CONSENT**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Consent of Defendant Beard to a Final Judgment of Permanent Injunction and Other Relief is incorporated herein with the same force and effect as if fully set forth herein, and that he shall comply with all of the undertakings and agreements set forth therein.

**VI.**

**RETENTION OF JURISDICTION**

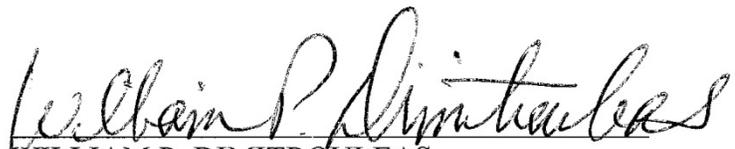
**IT IS HEREBY FURTHER ORDERED** that this Court shall retain jurisdiction over this matter and Defendant Beard in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

**VII.**

**RULE 54(b) CERTIFICATION**

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.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida,  
this 5th day of April, 2016.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:  
Counsel of Record