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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11  
12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 ADESH KUMAR TYAGI,

16 Defendant.

Case No. 4:17-cv-03128-JSW

~~PROPOSED~~

FINAL JUDGMENT AGAINST  
DEFENDANT ADESH KUMAR  
TYAGI IMPOSING A PERMANENT  
INJUNCTION, AN OFFICER AND  
DIRECTOR BAR, PENNY STOCK  
BAR, AND DISGORGEMENT WITH  
PREJUDGMENT INTEREST

17  
18  
19 The Securities and Exchange Commission having filed a Complaint and  
20 Defendant Adesh Kumar Tyagi (“Defendant” or “Tyagi”) having entered a general  
21 appearance; consented to the Court’s jurisdiction over Defendant and the subject  
22 matter of this action; consented to entry of this Final Judgment; waived findings of  
23 fact and conclusions of law; and waived any right to appeal from this Final Judgment:

24 I.

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is  
26 permanently restrained and enjoined from violating Section 17(a) of the Securities  
27 Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any  
28 security by the use of any means or instruments of transportation or communication

1 in interstate commerce or by use of the mails, directly or indirectly:

- 2 (a) to employ any device, scheme, or artifice to defraud;
- 3 (b) to obtain money or property by means of any untrue statement of a
- 4 material fact or any omission of a material fact necessary in order to
- 5 make the statements made, in light of the circumstances under which
- 6 they were made, not misleading; or
- 7 (c) to engage in any transaction, practice, or course of business which
- 8 operates or would operate as a fraud or deceit upon the purchaser.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as

10 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also

11 binds the following who receive actual notice of this Final Judgment by personal

12 service or otherwise: (a) Defendant's officers, agents, servants, employees, and

13 attorneys; and (b) other persons in active concert or participation with Defendant or

14 with anyone described in (a).

15 II.

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is

17 permanently restrained and enjoined from violating, directly or indirectly, Section

18 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §

19 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using

20 any means or instrumentality of interstate commerce, or of the mails, or of any

21 facility of any national securities exchange, in connection with the purchase or sale of

22 any security:

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

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

7 III.

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is  
9 permanently restrained and enjoined from violating Section 13(d) of the Exchange  
10 Act [15 U.S.C. § 78m(d)] and Rule 13d-1 [17 CFR § 240.13d-1] promulgated  
11 thereunder, by failing to file with the Commission a statement containing the  
12 information required by Schedule 13D (as provided in 17 C.F.R. § 240.13d-101),  
13 within 10 days after acquiring directly or indirectly the beneficial ownership of more  
14 than five percent of any equity security of a class which is specified in Exchange Act  
15 Rule 13d-1(i) [17 CFR § 240.13d-1(i)].

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

22 IV.

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is  
24 permanently restrained and enjoined from violating Section 16(a) of the Exchange  
25 Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 CFR § 240.16a-3] promulgated  
26 thereunder, by failing to file information, documents, and reports as required pursuant  
27 to Section 16(a) of the Exchange Act and Rule 16a-3, in the absence of any  
28 applicable exemption, when Defendant is, directly or indirectly, the beneficial owner

1 of more than 10 percent of any class of any equity security (other than an exempted  
2 security) which is registered pursuant to Section 12 of the Exchange Act [15 U.S.C.  
3 § 781], or is a director or an officer of an issuer of such security.

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

10 V.

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is  
12 permanently restrained and enjoined from, directly or indirectly, including, but not  
13 limited to, through any entity owned or controlled by Defendant, participating in the  
14 issuance, purchase, offer, or sale of any security of an entity of which he is an officer,  
15 director, owner, direct or indirect, of 10% or more of the issued and outstanding  
16 securities, or control person.

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

23 VI.

24 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to  
25 Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the  
26 Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited from acting as an  
27 officer or director of any issuer that has a class of securities registered pursuant to  
28 Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports

1 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

2 VII.

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

9 VIII.

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is  
11 liable for disgorgement of \$244,208, representing profits gained as a result of the  
12 conduct alleged in the Complaint, together with prejudgment interest thereon in the  
13 amount of \$49,387.19. Defendant shall satisfy this obligation by paying \$293,595.19  
14 to the Securities and Exchange Commission pursuant to the terms of the payment  
15 schedule set forth in paragraph VIII below after entry of this Final Judgment.

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

22 Enterprise Services Center  
23 Accounts Receivable Branch  
24 6500 South MacArthur Boulevard  
25 Oklahoma City, OK 73169

26 and shall be accompanied by a letter identifying the case title, civil action number,  
27 and name of this Court; Adesh Kumar Tyagi as a defendant in this action; and  
28 specifying that payment is made pursuant to this Final Judgment.

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

7 The Commission may enforce the Court's judgment for disgorgement and  
8 prejudgment interest by moving for civil contempt (and/or through other collections  
9 procedures authorized by law) at any time after 14 days following entry of this Final  
10 Judgment. Defendant shall pay post judgment interest on any delinquent amounts  
11 pursuant to 28 U.S.C. § 1961.

12 IX.

13 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant  
14 shall pay the total of disgorgement and prejudgment interest in three installments to  
15 the Commission according to the following schedule: (1) \$44,039.28 within 14 days  
16 of the entry of the Final Judgment; (2) \$102,758.32 within one-hundred-and-eighty  
17 (180) days of the entry of the Final Judgment; and (3) \$146,797.59 within three-  
18 hundred-and-sixty-five (365) days of the entry of the Final Judgment. Payments shall  
19 be deemed made on the date they are received by the Commission and shall be  
20 applied first to post judgment interest, which accrues pursuant to 28 U.S.C. §1961 on  
21 any unpaid amounts due after 14 days of the entry of Final Judgment. Prior to  
22 making the final payment set forth herein, Defendant shall contact the staff of the  
23 Commission for the amount due for the final payment.

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


1 X.

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, for  
3 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,  
4 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant,  
5 and further, any debt for disgorgement, prejudgment interest, civil penalty or other  
6 amounts due by Defendant under this Final Judgment or any other judgment, order,  
7 consent order, decree or settlement agreement entered in connection with this  
8 proceeding, is a debt for the violation by Defendant of the federal securities laws or  
9 any regulation or order issued under such laws, as set forth in Section 523(a)(19) of  
10 the Bankruptcy Code, 11 U.S.C. §523(a)(19).

11 XI.

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court  
13 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this  
14 Final Judgment.

15  
16  
17 Dated: August 17, 2017

  
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Honorable Jeffrey S. White  
United States District Judge