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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
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14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 vs.

17 MAYANK GUPTA and
18 PUSHPENDRA AGRAWAL,

19 Defendants.
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Case No. 5:17-cv-05274-SVK

**FINAL JUDGMENT AS TO
DEFENDANT PUSHPENDRA
AGRAWAL**

1 The Securities and Exchange Commission having filed a Complaint and
2 Defendant Pushpendra Agrawal, having entered a general appearance; consented to
3 the Court's jurisdiction over Defendant Agrawal and the subject matter of this action;
4 consented to entry of this Final Judgment without admitting or denying the
5 allegations of the Complaint (except as to jurisdiction and except as otherwise
6 provided herein in paragraph VII); waived findings of fact and conclusions of law;
7 and waived any right to appeal from this Final Judgment:

8 **I.**

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant
10 Agrawal is permanently restrained and enjoined from violating, directly or indirectly,
11 Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15
12 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by
13 using any means or instrumentality of interstate commerce, or of the mails, or of any
14 facility of any national securities exchange, in connection with the purchase or sale of
15 any security:

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

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

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II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Agrawal is permanently restrained and enjoined from violating, directly or indirectly, Section 14(e) of the Exchange Act [15 U.S.C. §78n(e)] and Rule 14e-3 promulgated thereunder [17 C.F.R. §240.13e-5], in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant Agrawal 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 or other person acting on behalf of the offering person of such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or
- (b) communicating material, nonpublic information relating to a tender offer, which Defendant Agrawal 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

1 person under circumstances in which it is reasonably foreseeable
2 that such communication is likely to result in the purchase or sale
3 of securities in the manner described in subparagraph (a) above,
4 except that this paragraph shall not apply to a communication
5 made in good faith

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

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

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

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 Agrawal’s officers, agents, servants, employees,
21 and attorneys; and (b) other persons in active concert or participation with Defendant
22 Agrawal or with anyone described in (a).

23 **III.**

24 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
25 Defendant Agrawal is liable for disgorgement of \$23,785.40, representing profits
26 gained as a result of the conduct alleged in the Complaint, together with prejudgment
27 interest thereon in the amount of \$964.43, for a total of \$24,749.83. Defendant
28 Agrawal shall satisfy this obligation by paying \$24,749.83 to the Securities and

1 Exchange Commission within 14 days after entry of this Final Judgment.

2 Defendant Agrawal may transmit payment electronically to the Commission,
3 which will provide detailed ACH transfer/Fedwire instructions upon request.

4 Payment may also be made directly from a bank account via Pay.gov through the
5 SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant Agrawal may
6 also pay by certified check, bank cashier's check, or United States postal money
7 order payable to the Securities and Exchange Commission, which shall be delivered
8 or mailed to

9 Enterprise Services Center
10 Accounts Receivable Branch
11 6500 South MacArthur Boulevard
12 Oklahoma City, OK 73169

13 and shall be accompanied by a letter identifying the case title, civil action number,
14 and name of this Court; Pushpendra Agrawal as a defendant in this action; and
15 specifying that payment is made pursuant to this Final Judgment.

16 Defendant Agrawal shall simultaneously transmit photocopies of evidence of
17 payment and case identifying information to the Commission's counsel in this action.
18 By making this payment, Defendant Agrawal relinquishes all legal and equitable
19 right, title, and interest in such funds and no part of the funds shall be returned to
20 Defendant Agrawal.

21 The Commission shall hold the funds (collectively, the "Fund") and may
22 propose a plan to distribute the Fund subject to the Court's approval. The Court shall
23 retain jurisdiction over the administration of any distribution of the Fund. If the
24 Commission staff determines that the Fund will not be distributed, the Commission
25 shall send the funds paid pursuant to this Final Judgment to the United States
26 Treasury.

27 The Commission may enforce the Court's judgment for disgorgement and
28 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

1 Judgment. Defendant Agrawal shall pay post judgment interest on any delinquent
2 amounts pursuant to 28 U.S.C. § 1961.

3 **IV.**

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
5 Agrawal shall pay a civil penalty in the amount of \$11,892.70 to the Securities and
6 Exchange Commission pursuant to Section 21A of the Exchange Act, [15 U.S.C.
7 §78tu-1]. Defendant Agrawal shall make this payment within 14 days after entry of
8 this Final Judgment.

9 Defendant Agrawal may transmit payment electronically to the Commission,
10 which will provide detailed ACH transfer/Fedwire instructions upon request.
11 Payment may also be made directly from a bank account via Pay.gov through the
12 SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant Agrawal may
13 also pay by certified check, bank cashier's check, or United States postal money
14 order payable to the Securities and Exchange Commission, which shall be delivered
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23 payment and case identifying information to the Commission's counsel in this action.
24 By making this payment, Defendant Agrawal relinquishes all legal and equitable
25 right, title, and interest in such funds and no part of the funds shall be returned to
26 Defendant Agrawal. The Commission shall send the funds paid pursuant to this Final
27 Judgment to the United States Treasury. Defendant Agrawal shall pay post-judgment
28 interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

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V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Agrawal shall comply with all of the undertakings and agreements set forth therein.

VI.

IT IS 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 Agrawal, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant Agrawal 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 Agrawal 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.

IX.

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: October 11, 2017


UNITED STATES MAGISTRATE JUDGE