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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

RMR Asset Management Company,
Bruce A. Broekhuizen, Douglas J.
Derryberry, David R. Frost, Richard C.
Gounaud, Neil P. Kelly, John M.
Kirschenbaum, David S. Luttbeg,
Timothy J. McAloon, Jocelyn M.
Murphy, Michael Sean Murphy, Ralph
M. Riccardi, Dewey T. Tran, and
Philip A. Weiner,

Defendants.

Case No. 3:18-cv-01895-AJB-JMA

**ORDER GRANTING CONSENT
JUDGMENT**

(Doc. No. 12)

FINAL JUDGMENT AS TO DEFENDANT PHILIP A. WEINER

The Securities and Exchange Commission (“Commission”) having filed a Complaint and Defendant Philip A. Weiner (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant 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 in paragraph VII); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

1
2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
3 permanently restrained and enjoined from violating, directly or indirectly, Section
4 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §
5 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using
6 any means or instrumentality of interstate commerce, or of the mails, or of any
7 facility of any national securities exchange, in connection with the purchase or sale of
8 any security:

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

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

21 II.

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
23 permanently restrained and enjoined from violating, directly or indirectly, Section
24 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], by making use of the mails or
25 the means or instrumentalities of interstate commerce to effect transactions in, or to
26 induce or attempt to induce the purchase or sale of, a security without being
27 registered in accordance with Section 15(a)(1) of the Exchange Act while engaged in
28 the business of effecting transactions in securities for the account of others.

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, directly or indirectly, Rule G-17
10 of the Municipal Securities Rulemaking Board by not dealing fairly with all persons
11 and/or by engaging in any deceptive, dishonest, or unfair practice.

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

18 IV.

19 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
20 enjoined for a period of five (5) years from the date of this Final Judgment from,
21 directly or indirectly, opening or maintaining any brokerage account(s) without
22 providing the relevant brokerage firm(s) a copy of the Complaint and a copy of this
23 Final Judgment.

24 V.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
26 is liable for disgorgement of \$22,429, representing profits gained as a result of the
27 conduct alleged in the Complaint, together with prejudgment interest thereon in the
28 amount of \$2,696, and a civil penalty in the amount of \$45,000 pursuant to Section

1 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this
2 obligation pursuant to the terms of the payment schedule set forth in paragraph VI
3 below.

4 Defendant may transmit payment electronically to the Commission, which will
5 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also
6 be made directly from a bank account via Pay.gov through the SEC website at
7 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified
8 check, bank cashier's check, or United States postal money order payable to the
9 Securities and Exchange Commission, which shall be delivered or mailed to
10 Enterprise Services Center
11 Accounts Receivable Branch
12 6500 South MacArthur Boulevard
13 Oklahoma City, OK 73169

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

17 Defendant shall simultaneously transmit photocopies of evidence of payment
18 and case identifying information to the Commission's counsel in this action. By
19 making this payment, Defendant relinquishes all legal and equitable right, title, and
20 interest in such funds and no part of the funds shall be returned to Defendant. The
21 Commission shall send the funds paid pursuant to this Final Judgment to the United
22 States Treasury.

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

1 VI.

2 Defendant shall pay the total of disgorgement, prejudgment interest, and
3 penalty due of \$70,125 in four (4) installments to the Commission according to the
4 following schedule: (1) \$17,531.25 within 14 days of entry of this Final Judgment;
5 (2) \$17,531.25 within four months of entry of this Final Judgment; (3) \$17,531.25
6 within eight months of entry of this Final Judgment; and (4) \$17,531.25 within 364
7 days of entry of this Final Judgment. Payments shall be deemed made on the date
8 they are received by the Commission and shall be applied first to post judgment
9 interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after
10 14 days of the entry of Final Judgment. Prior to making the final payment set forth
11 herein, Defendant shall contact the staff of the Commission for the amount due for
12 the final payment.

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

18 VII.

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

VIII.


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.

IT IS SO ORDERED.

Dated: August 17, 2018


Hon. Anthony J. Battaglia
United States District Judge

