

MARC J. FAGEL (Cal. Bar No. 154425)  
ROBERT L. MITCHELL (Cal. Bar No. 161354)  
mitchellr@sec.gov  
MONIQUE C. WINKLER (Cal. Bar. No 213031)  
winklerm@sec.gov

Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
44 Montgomery Street, 26th Floor  
San Francisco, California 94104  
Telephone: (415) 705-2500  
Facsimile: (415) 705-2501

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

SECURITIES AND EXCHANGE COMMISSION,  
  
Plaintiff,  
  
v.  
  
ANTHONY VASSALLO, KENNETH KENITZER  
and EQUITY INVESTMENT MANAGEMENT  
AND TRADING, INC.,  
  
Defendants.

Case No.2:09-CV-00665-LKK-DAD  
  
JUDGMENT OF PERMANENT  
INJUNCTION AND OTHER RELIEF  
AGAINST DEFENDANT KENNETH  
KENITZER

The Securities and Exchange Commission (“Commission”) having filed a Complaint in this matter and defendant Kenneth Kenitzer (“Defendant”) having entered a general appearance and executed a Consent of Defendant Kenneth Kenitzer to Judgment of Permanent Injunction and Other Relief (“Consent”), in which among other things, Defendant consented to the Court’s jurisdiction over him and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations in the Complaint

1 (except as to jurisdiction, which Defendant admits); waived findings of fact and conclusions  
2 of law; and waived any right to appeal from this Judgment:

3 I.

4 IT IS ORDERED THAT defendant Kenneth Kenitzer and his agents, servants,  
5 employees, attorneys, and those persons in active concert or participation with any of them,  
6 who receive actual notice of this Judgment, by personal service or otherwise, and each of  
7 them, are permanently restrained and enjoined from, in the offer or sale of any securities, by  
8 the use of any means or instruments of transportation or communication in interstate  
9 commerce or by the use of the mails, directly or indirectly:

- 10 A. employing any device, scheme, or artifice to defraud; or  
11 B. obtaining money or property by means of any untrue statement of a material  
12 fact or any omission to state a material fact necessary in order to make the  
13 statements made, in light of the circumstances under which they were made,  
14 not misleading; or  
15 C. engaging in any transaction, practice, or course of business which operates or  
16 would operate as a fraud or deceit upon the purchaser;

17 in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §  
18 77q(a)].

19 II.

20 IT IS FURTHER ORDERED THAT defendant Kenneth Kenitzer and his agents,  
21 servants, employees, attorneys, and those persons in active concert or participation with any  
22 of them, who receive actual notice of this Judgment, by personal service or otherwise, and  
23 each of them, are permanently restrained and enjoined from, directly or indirectly, by the use  
24 of any means or instrumentality of interstate commerce, or of the mails, or of any facility of  
25 any national securities exchange:

- 26 A. employing any device, scheme, or artifice to defraud;

1 B. making any untrue statement of a material fact or omitting to state a material  
2 fact necessary in order to make the statements made, in the light of the  
3 circumstances under which they were made, not misleading; or

4 C. engaging in any act, practice, or course of business which operates or would  
5 operate as a fraud or deceit upon any person;

6 in connection with the purchase or sale of any security, in violation of Section 10(b) of the  
7 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Exchange Act  
8 Rule 10b-5 [17 C.F.R. § 240.10b-5].

9 III.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, upon  
11 motion by the Commission, the Court shall determine whether it is appropriate to order  
12 disgorgement of ill-gotten gains and/or civil penalties pursuant to Section 20(d) of the  
13 Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C.  
14 § 78u(d)(3)] and, if so, the amount(s) of the disgorgement and/or civil penalties. If  
15 disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated based  
16 on the rate of interest used by the Internal Revenue Service for the underpayment of federal  
17 income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission’s  
18 motion for disgorgement, prejudgment interest and/or civil penalties, and at any hearing held  
19 on such a motion, Defendant may defend against the motion except that: (a) Defendant will be  
20 precluded from arguing that he did not violate the federal securities laws as alleged in the  
21 Complaint; (b) Defendant may not challenge the validity of the Consent or this Judgment; (c)  
22 solely for the purposes of such motion, the allegations of the Complaint shall be accepted as  
23 and deemed true by the Court; and (d) the Court may determine the issues raised in the motion  
24 on the basis of affidavits, declarations, excerpts of sworn deposition or investigative  
25 testimony, and documentary evidence, without regard to the standards for summary judgment  
26 contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the  
27

1 Commission's motion for disgorgement, prejudgment interest and/or civil penalties, the  
2 parties may take discovery, including discovery from appropriate non-parties.

3 IV.

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


7 V.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall  
9 retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

10 VI.

11 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of  
12 Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further  
13 notice.

14  
15 Date: September 3, 2009

16  
17   
18 LAWRENCE K. KARLTON  
19 SENIOR JUDGE  
20 UNITED STATES DISTRICT COURT

21 Approved as to form:

22 /s/Edward Gelfand  
23 Edward Gelfand, Esq.  
24 Gartenberg, Gelfand, Wasson and Selden LLP  
25 801 South Figueroa Street, Suite 2170  
26 Los Angeles, CA 90017  
27 (213) 542-2100

28 Attorney for Defendant  
KENNETH KENITZER