

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

NOV 01 2013

at 2 o'clock and 40 min. P.M.
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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAI'I

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TROY LYNDON AND RONALD
ZAUCHA,

Defendants.

Case No. CV13-00486 SOM-KSC

^{COM}
~~PROPOSED~~ JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST
DEFENDANT TROY R. LYNDON

The Securities and Exchange Commission having filed a Complaint and Defendant Troy Lyndon 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 Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by

1 personal service or otherwise are permanently restrained and enjoined from
2 violating Section 5 of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §
3 77e(a)(1)-(2), 77e(c), by, directly or indirectly, in the absence of any applicable
4 exemption:

5 (a) Unless a registration statement is in effect as to a security, making use
6 of any means or instruments of transportation or communication in
7 interstate commerce or of the mails to sell such security through the
8 use or medium of any prospectus or otherwise (15 U.S.C. §
9 77e(a)(1));

10 (b) Unless a registration statement is in effect as to a security, carrying or
11 causing to be carried through the mails or in interstate commerce, by
12 any means or instruments of transportation, any such security for the
13 purpose of sale or for delivery after sale (15 U.S.C. § 77e(a)(2));; or

14 (c) Making use of any means or instruments of transportation or
15 communication in interstate commerce or of the mails to offer to sell
16 or offer to buy through the use or medium of any prospectus or
17 otherwise any security, unless a registration statement has been filed
18 with the Commission as to such security, or while the registration
19 statement is the subject of a refusal order or stop order or (prior to the
20 effective date of the registration statement) any public proceeding or
21 examination under Section 8 of the Securities Act, 15 U.S.C. § 77h
22 ((15 U.S.C. § 77e(c)).

23 **II.**

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
25 Defendant and Defendant’s agents, servants, employees, attorneys, and all persons
26 in active concert or participation with them who receive actual notice of this
27 Judgment by personal service or otherwise are permanently restrained and enjoined
28 from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), in the offer

1 or sale of any security by the use of any means or instruments of transportation or
2 communication in interstate commerce or by use of the mails, directly or
3 indirectly:

- 4 (a) to employ any device, scheme, or artifice to defraud (15 U.S.C. §
5 77q(a)(1));
- 6 (b) to obtain money or property by means of any untrue statement of a
7 material fact or any omission of a material fact necessary in order to
8 make the statements made, in light of the circumstances under which
9 they were made, not misleading (15 U.S.C. § 77q(a)(2)); or
- 10 (c) to engage in any transaction, practice, or course of business which
11 operates or would operate as a fraud or deceit upon the purchaser (15
12 U.S.C. § 77q(a)(3)).

13 **III.**

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
15 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
16 in active concert or participation with them who receive actual notice of this
17 Judgment by personal service or otherwise are permanently restrained and enjoined
18 from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act
19 of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
20 thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of
21 interstate commerce, or of the mails, or of any facility of any national securities
22 exchange, in connection with the purchase or sale of any security:

- 23 (a) to employ any device, scheme, or artifice to defraud (17 C.F.R.
24 § 240.10b-5(a));
- 25 (b) to make any untrue statement of a material fact or to omit to state a
26 material fact necessary in order to make the statements made, in the
27 light of the circumstances under which they were made, not
28 misleading (17 C.F.R. § 240.10b-5(b)); or

1 (c) to engage in any act, practice, or course of business which operates or
2 would operate as a fraud or deceit upon any person (17 C.F.R.
3 § 240.10b-5(c)).

4 **IV.**

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
6 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
7 in active concert or participation with them who receive actual notice of this
8 Judgment by personal service or otherwise are permanently restrained and enjoined
9 from aiding and abetting any violation of Section 13(a) of the Exchange Act, 15
10 U.S.C. § 78m(a), and Rules 12b-20, 13a-1 and 13a-13 thereunder, 17 C.F.R. §§
11 240.12b-20, 240.13a-1 & 240.13a-13, by knowingly providing substantial
12 assistance to an issuer that files annual reports with the Commission on Forms
13 10-K or quarterly reports with the Commission on Forms 10-Q that fail to contain
14 material information necessary to make the required statements in the Forms 10-K
15 or 10-Q, in light of the circumstances under which they are made, not misleading.

16 **V.**

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
18 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
19 in active concert or participation with them who receive actual notice of this
20 Judgment by personal service or otherwise are permanently restrained and enjoined
21 from violating Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), by
22 knowingly circumventing or knowingly failing to implement a system of internal
23 accounting controls or knowingly falsifying any book, record or account required
24 to be kept by Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A),
25 in order to, in reasonable detail, accurately and fairly reflect the transactions and
26 dispositions of the assets of the issuer.

27 **VI.**

28 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

1 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
2 in active concert or participation with them who receive actual notice of this
3 Judgment by personal service or otherwise are permanently restrained and enjoined
4 from violating Rule 13b2-1 of the Exchange Act, 17 C.F.R. § 240.13b2-1, by,
5 directly or indirectly, falsifying or causing to be falsified, any book, record, or
6 account subject to Section 13(b)(2)(A) of the Exchange Act.

7
8 **VII.**

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
10 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
11 in active concert or participation with them who receive actual notice of this
12 Judgment by personal service or otherwise are permanently restrained and enjoined
13 from violating, directly or indirectly, Rule 13b2-2 of the Exchange Act, 17 C.F.R.
14 § 240.13b2-2, while an officer or director of an issuer by:

- 15 (a) making or causing to be made a materially false or misleading
16 statement 17 C.F.R. § 240.13b2-2(a)(1)); or
17 (b) omitting to state, or causing another person to omit to state, any
18 material fact necessary in order to make statements made, in light of
19 the circumstances under which such statements are made, not
20 misleading (17 C.F.R. § 240.13b2-2(a)(2));

21 to an accountant in connection with:

- 22 (1) any audit, review or examination of the financial statements of
23 the issuer required to be made (17 C.F.R. § 240.13b2-
24 2(a)(2)(i)), or
25 (2) the preparation or filing of any document or report required to
26 be filed with the Commission (17 C.F.R. § 240.13b2-
27 2(a)(2)(ii)); or
28 (c) taking any action to coerce, manipulate, mislead, or fraudulently

1 influence any independent public or certified public accountant
2 engaged in the performance of an audit or review of the financial
3 statements of that issuer that are required to be filed with the
4 Commission if he knows or should know that such action, if
5 successful, could result in rendering the issuer's financial statements
6 materially misleading (17 C.F.R. § 240.13b2-2(b)(1)).

7 **VIII.**

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
9 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
10 in active concert or participation with them who receive actual notice of this
11 Judgment by personal service or otherwise are permanently restrained and enjoined
12 from violating Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14, by signing any
13 certification included with an issuer's periodic filings with the Commission,
14 certifying the filings fully comply with the requirements of the Exchange Act and
15 fairly present, in all material respects, the financial condition and results of
16 operation of the company, when, in fact, the reports contain untrue statements of
17 material fact and omit material information necessary to make the reports not
18 misleading.

19 **IX.**

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that,
21 pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section
22 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), Defendant is permanently
23 prohibited from acting as an officer or director of any issuer that has a class of
24 securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l,
25 or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15
26 U.S.C. § 78o(d).

27 **X.**

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

8 **XI.**

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
10 Defendant shall pay disgorgement of ill-gotten gains, prejudgment interest thereon,
11 and a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C.
12 § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). The
13 Court shall determine the amounts of the disgorgement and civil penalty upon
14 motion of the Commission. Prejudgment interest shall be calculated from August
15 4, 2011, based on the rate of interest used by the Internal Revenue Service for the
16 underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In
17 connection with the Commission's motion for disgorgement and/or civil penalties,
18 and at any hearing held on such a motion: (a) Defendant will be precluded from
19 arguing that he did not violate the federal securities laws as alleged in the
20 Complaint; (b) Defendant may not challenge the validity of the Consent or this
21 Judgment; (c) solely for the purposes of such motion, the allegations of the
22 Complaint shall be accepted as and deemed true by the Court; and (d) the Court
23 may determine the issues raised in the motion on the basis of affidavits,
24 declarations, excerpts of sworn deposition or investigative testimony, and
25 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
27 with the Commission's motion for disgorgement and/or civil penalties, the parties
28 may take discovery, including discovery from appropriate non-parties.

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XII.

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 shall comply with all of the undertakings and agreements set forth therein.


XIII.

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 Judgment, and for purposes of determining additional relief in this action, including the amounts of any disgorgement, interest and/or penalty.

XIV.

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 Judgment forthwith and without further notice.

Dated:


HONORABLE SUSAN OKI MOLLWAY
UNITED STATES DISTRICT JUDGE