

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-80823-CIV-COHN

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

WESTON CAPITAL ASSET  
MANAGEMENT LLC, ALBERT  
HALLAC, and KEITH WELLNER,

Defendants,

JEFFREY HALLAC,

Relief Defendant.

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**JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF**  
**AS TO DEFENDANT KEITH WELLNER**

**THIS CAUSE** is before the Court upon Plaintiff's Notice of Filing Consent of Defendant Keith Wellner to Judgment of Permanent Injunction and Other Relief and Request for Entry of Judgment [DE 5]. The Court has carefully reviewed this filing and is otherwise fully advised in the premises. Accordingly, as set forth below, Judgment is hereby **ENTERED** in favor of Plaintiff Securities and Exchange Commission and against Defendant Keith Wellner.

The Securities and Exchange Commission having filed a Complaint; Defendant Keith Wellner having entered a general appearance, consented to the Court's jurisdiction over Wellner 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 subject matter and personal jurisdiction), waived findings of fact and conclusions of law,

and waived any right to appeal from this Judgment; and the Court having accepted such Consent and having jurisdiction over Wellner and the subject matter of this action, it is hereby

**ORDERED AND ADJUDGED** as follows:

**I. Permanent Injunction**

**A. Section 10(b) and Rules 10b-5(a) and (c) of the Exchange Act**

Wellner and his agents, servants, representatives, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rules 10b-5(a) and (c) promulgated thereunder [17 C.F.R. § 240.10b-5(a) and (c)], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud; or
- (b) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities, (B) the prospects for success of any product or company, (C) the use of investor funds, (D) compensation to any person, or (E) the misappropriation of investor funds or investment proceeds.

**B. Sections 206(1) and 206(2) of the Advisers Act**

Wellner and his agents, servants, representatives, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Sections 206(1) and (2) of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. § 80b-6(1) and (2)] by using the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or
- (b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any client or prospective client, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any client or prospective client, about: (A) any investment strategy or investment in securities, (B) the prospects for success of any product or company, (C) the use of client funds, (D) compensation to any person, or (E) the misappropriation of client funds or investment proceeds.

**C. Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(2)**

Wellner and his agents, servants, representatives, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8(a)(2) thereunder [17 C.F.R. § 275.206(4)-8(a)(2)], by

using the mails or any means or instrumentality of interstate commerce, directly or indirectly, to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any client or prospective client, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any client or prospective client, about: (A) any investment strategy or investment in securities, (B) the prospects for success of any product or company, (C) the use of client funds, (D) compensation to any person, or (E) the misappropriation of client funds or investment proceeds.

## **II. Disgorgement and Civil Penalty**

Wellner is liable for disgorgement of \$120,000, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$2,405.79. Wellner shall satisfy this obligation by paying \$24,481.79 that he has escrowed with his counsel within fourteen days of entry of this Judgment. Wellner shall also make four equal payments of \$24,481.00, each due 3 months from entry of the Judgment, 6 months from entry of the Judgment, 9 months from entry of the Judgment, and 1 year from entry of the Judgment.

If Wellner fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately. The Commission may at that point enforce the Judgment for disgorgement by moving for civil contempt (and/or through other collection procedures authorized by law) at any time. Wellner shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

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

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; stating Wellner's name as a defendant in this action; and specifying that payment is made pursuant to this Judgment.

Wellner shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Wellner relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Wellner. The Commission shall hold the funds together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff or the Court determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to the Judgment to the United States Treasury.

Upon motion of the Commission, the Court shall determine whether it is appropriate to order a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 217 of the Advisers Act [15 U.S.C. § 80b-17] and, if so, the amount of the civil penalty. In connection with the Commission's motion for civil penalty, and at any hearing held on such a motion: (a) Wellner will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Wellner may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for civil penalty, the parties may take discovery, including discovery from appropriate non-parties.

### **III. Incorporation of Consent**

The Consent is incorporated herein with the same force and effect as if fully set forth herein, and Wellner shall comply with all of the undertakings and agreements set forth in the Consent.

### **IV. Retention of Jurisdiction**

This Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

### **V. Rule 54(b) Certification**

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.

**DONE AND ORDERED** in Chambers in Fort Lauderdale, Broward County,  
Florida, this 3rd day of July, 2014.



JAMES I. COHN  
United States District Judge

Copies provided to:

Counsel of record via CM/ECF