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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States Securities and Exchange
Commission,

Plaintiff,

v.

Janus Spectrum LLC, et al.,

Defendants.

No. CV-15-00609-PHX-SMM

**AMENDED FINAL JUDGMENT AS
TO DEFENDANTS JANUS
SPECTRUM LLC, DAVID ALCORN,
DAVID ALCORN PROFESSIONAL
CORPORATION, AND KENT
MAERKI**

The Court’s summary judgment order in favor of Plaintiff Securities and Exchange Commission (the “SEC”) against Defendants Janus Spectrum LLC (“Janus”), David Alcorn (“Alcorn”), David Alcorn Professional Corporation (“DAPC”), and Kent Maerki (“Maerki”) has been affirmed by the Ninth Circuit Court of Appeals. SEC v. Janus Spectrum, No. 18-15403, slip op. (9th Cir. July 1, 2020). (See Doc. 239.) The Court considered the parties’ additional briefing on the issues on remand and ruled that Defendants should be held liable for disgorgement on a joint-and-several basis, the amount of prejudgment interest corrected, and the disgorgement award be provided for the benefit of investors. (Docs. 267, 272.)

Accordingly, the Court now enters this Amended Final Judgment, as follows:

I.

IT IS ORDERED, ADJUDGED, AND DECREED that Defendants Janus, DAPC, Alcorn and Maerki are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the

1 “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R.
2 § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the
3 mails, or of any facility of any national securities exchange, in connection with the
4 purchase or sale of any security:

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

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

17 **II.**

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants
19 Janus, Alcorn and Maerki are permanently restrained and enjoined from violating Section
20 17(a) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a), in the offer
21 or sale of any security by the use of any means or instruments of transportation or
22 communication in interstate commerce or by use of the mails, directly or indirectly:

- 23 (a) to employ any device, scheme, or artifice to defraud;
- 24 (b) to obtain money or property by means of any untrue statement of a material
25 fact or any omission of a material fact necessary in order to make the
26 statements made, in light of the circumstances under which they were
27 made, not misleading; or
- 28 (c) to engage in any transaction, practice, or course of business which operates

1 or would operate as a fraud or deceit upon the purchaser.

2 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
3 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
4 the following who receive actual notice of this Final Judgment by personal service or
5 otherwise: (a) any officers, agents, servants, employees, and attorneys of Defendants
6 Janus, Alcorn and Maerki; and (b) other persons in active concert or participation with
7 Defendants Janus, Alcorn and Maerki, or with anyone described in (a).

8 **III.**

9 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants
10 Janus, Alcorn and Maerki are permanently restrained and enjoined from violating Section
11 5 of the Securities Act, 15 U.S.C. § 77e, by, directly or indirectly, in the absence of any
12 applicable exemption:

- 13 (a) Unless a registration statement is in effect as to a security, making use of
14 any means or instruments of transportation or communication in interstate
15 commerce or of the mails to sell such security through the use or medium
16 of any prospectus or otherwise;
- 17 (b) Unless a registration statement is in effect as to a security, carrying or
18 causing to be carried through the mails or in interstate commerce, by any
19 means or instruments of transportation, any such security for the purpose of
20 sale or for delivery after sale; or
- 21 (c) Making use of any means or instruments of transportation or
22 communication in interstate commerce or of the mails to offer to sell or
23 offer to buy through the use or medium of any prospectus or otherwise any
24 security, unless a registration statement has been filed with the Commission
25 as to such security, or while the registration statement is the subject of a
26 refusal order or stop order or (prior to the effective date of the registration
27 statement) any public proceeding or examination under Section 8 of the
28 Securities Act, 15 U.S.C. § 77h.

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 binds
3 the following who receive actual notice of this Final Judgment by personal service or
4 otherwise: (a) any officers, agents, servants, employees, and attorneys of Defendants
5 Janus, Alcorn and Maerki; and (b) other persons in active concert or participation with
6 Defendants Janus, Alcorn and Maerki, or with anyone described in (a).

7 **IV.**

8 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants
9 Janus, DAPC, Alcorn and Maerki are permanently restrained and enjoined from
10 violating, directly or indirectly, Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a),
11 which makes it unlawful for any broker or dealer which is either a person other than a
12 natural person or a natural person, to make use of the mails or any means or
13 instrumentality of interstate commerce to effect any transactions in, or to induce or
14 attempt to induce the purchase or sale of, any security (other than an exempted security or
15 commercial paper, bankers' acceptances, or commercial bills) unless such broker or
16 dealer is registered in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. §
17 78o(b).

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as
19 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds
20 the following who receive actual notice of this Final Judgment by personal service or
21 otherwise: (a) any officers, agents, servants, employees, and attorneys of Defendants
22 Janus, DAPC, Alcorn and Maerki; and (b) other persons in active concert or participation
23 with Defendants Janus, DAPC, Alcorn and Maerki, or with anyone described in (a).

24 **V.**

25 **IT IS FURTHER ORDERED, ADJUGED, AND DECREED** that Defendants
26 Janus, DAPC, Alcorn and Maerki are liable, jointly and severally with each other, for
27 disgorgement of \$6,172,360, representing the profits gained as a result of the conduct
28 alleged in the Complaint, together with prejudgment interest thereon in the amount of

1 \$750,769, for a total of \$6,923,129. Defendants Janus, DAPC, Alcorn and Maerki shall
2 satisfy this obligation by paying \$6,923,129 to the Securities and Exchange Commission
3 within 14 days after entry of this Final Judgment.

4 The Defendants may transmit payment electronically to the SEC, which will
5 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be
6 made directly from a bank account via Pay.gov through the SEC website at
7 <http://www.sec.gov/about/offices/ofm.htm>. The Defendants 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, and
15 name of this Court; the defendant as a defendant in this action; and specifying that
16 payment is made pursuant to this Final Judgment.

17 The Defendants shall simultaneously transmit photocopies of evidence of payment
18 and case identifying information to the SEC's counsel in this action. By making this
19 payment, the Defendants relinquish all legal and equitable right, title, and interest in such
20 funds and no part of the funds shall be returned to any of the defendants.

21 The SEC shall hold the funds until it is able to distribute the funds for the benefit
22 of investors. The SEC shall propose a plan to distribute the funds subject to the Court's
23 approval. The Court shall retain jurisdiction over the administration of any distribution of
24 the funds.

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

1 U.S.C. § 1961.

2 **VI.**

3 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, in addition
4 to their obligations to pay disgorgement and prejudgment interest, Defendant Alcorn shall
5 pay a civil penalty in the amount of \$3,394,798, and Defendant Maerki shall pay a civil
6 penalty in the amount of \$2,777,562. The Defendants civil penalties are Ordered pursuant
7 to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the
8 Exchange Act, 15 U.S.C. § 78u(d)(3).

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

15 Enterprise Services Center
16 Accounts Receivable Branch
17 6500 South MacArthur Boulevard
18 Oklahoma City, OK 73169

19 and shall be accompanied by a letter identifying the case title, civil action number, and
20 name of this Court; the Defendant as a Defendant in this action; and specifying that
21 payment is made pursuant to this Final Judgment.

22 The Defendants shall simultaneously transmit photocopies of evidence of payment
23 and case identifying information to the SEC's counsel in this action. By making this
24 payment, the Defendants relinquish all legal and equitable right, title, and interest in such
25 funds and no part of the funds shall be returned to any of the defendants.

26 The SEC shall hold the funds and may propose a plan to distribute the funds
27 subject to the Court's approval. The Court shall retain jurisdiction over the administration
28 of any distribution of the funds. If the SEC staff determines that the funds will not be

1 distributed, the SEC shall send the funds paid pursuant to this Final Judgment to the
2 United States Treasury.

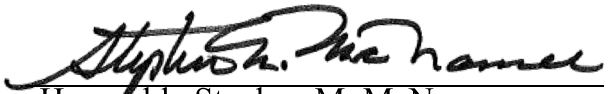
3 **VII.**

4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, solely for
5 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11
6 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendants, and
7 further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts
8 due by any of the Defendants under this Final Judgment or any other judgment, order,
9 consent order, decree or settlement agreement entered in connection with this proceeding,
10 is a debt for the violation by Defendants of the federal securities laws or any regulation or
11 order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code,
12 11 U.S.C. § 523(a)(19).

13 **VIII.**

14 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court
15 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final
16 Judgment.

17 Dated this 30th day of April, 2021.

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19 _____
20 Honorable Stephen M. McNamee
21 Senior United States District Judge
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