

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GANNON GIGUIERE,
OLIVER-BARRET LINDSAY,
ANDREW HACKETT, KEVIN
GILLESPIE, and ANNETTA
BUDHU,

Defendants.

Case No.: 18-cv-1530-WQH-JLB

**ORDER AND FINAL JUDGMENT
PURSUANT TO RULE 54(B)**

HAYES, Judge:

The Securities and Exchange Commission (“SEC”) having filed a Complaint on July 6, 2018 (ECF No. 1) and a Second Amended Complaint on April 7, 2023 (ECF No. 136) and Defendant Gannon Giguiere (“Giguiere”) having filed an Answer on July 30, 2018 (ECF No. 12), Giguiere having executed a consent to a bifurcated judgment on March 31, 2023 (“Consent”) (ECF No. 137), the Court having entered a bifurcated consent judgment on April 17, 2023 (ECF No. 139), and the Court having issued an Order on June 11, 2024 granting the SEC’s motion for civil penalties, disgorgement, and prejudgment interest (ECF No. 217):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is 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 Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], 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;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

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

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

1 (b) Unless a registration statement is in effect as to a security, carrying or causing
2 to be carried through the mails or in interstate commerce, by any means or
3 instruments of transportation, any such security for the purpose of sale or for
4 delivery after sale; or

5 (c) Making use of any means or instruments of transportation or communication
6 in interstate commerce or of the mails to offer to sell or offer to buy through
7 the use or medium of any prospectus or otherwise any security, unless a
8 registration statement has been filed with the SEC as to such security, or while
9 the registration statement is the subject of a refusal order or stop order or (prior
10 to the effective date of the registration statement) any public proceeding or
11 examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

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

17 **III.**

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to
19 Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited
20 from acting as an officer or director of any issuer that has a class of securities registered
21 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file
22 reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

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1 IV.

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

8 V.

9 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
 10 Defendant is liable for disgorgement of \$7,760,415.97, representing net profits gained as a
 11 result of the conduct alleged in the Second Amended Complaint, together with prejudgment
 12 interest thereon in the amount of \$2,091,439.85, and a civil penalty in the amount of
 13 \$875,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section
 14 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this
 15 obligation by paying \$10,726,855.82 to the Securities and Exchange Commission within
 16 30 days after entry of this Final Judgment.

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

23 Enterprise Services Center

24 Accounts Receivable Branch

25 6500 South MacArthur Boulevard

26 Oklahoma City, OK 73169

27 and shall be accompanied by a letter identifying the case title, civil action number, and
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1 name of this Court; Gannon Giguere as a defendant in this action; and specifying that
2 payment is made pursuant to this Final Judgment.

3 Defendant shall simultaneously transmit photocopies of evidence of payment and
4 case identifying information to the SEC's counsel in this action. By making this payment,
5 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no
6 part of the funds shall be returned to Defendant.

7 The SEC may enforce the Court's judgment for disgorgement and prejudgment
8 interest by using all collection procedures authorized by law, including, but not limited to,
9 moving for civil contempt at any time after 30 days following entry of this Final Judgment.

10 The SEC may enforce the Court's judgment for penalties by the use of all collection
11 procedures authorized by law, including the Federal Debt Collection Procedures Act, 28
12 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders
13 issued in this action. Defendant shall pay post judgment interest on any amounts due after
14 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The SEC shall
15 hold the funds, together with any interest and income earned thereon (collectively, the
16 "Fund"), pending further order of the Court.

17 The SEC may propose a plan to distribute the Fund subject to the Court's approval.
18 Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund
19 provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain
20 jurisdiction over the administration of any distribution of the Fund and the Fund may only
21 be disbursed pursuant to an order of the Court.

22 Regardless of whether any such Fair Fund distribution is made, amounts ordered to
23 be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid
24 to the government for all purposes, including all tax purposes. To preserve the deterrent
25 effect of the civil penalty, Defendant shall not, after offset or reduction of any award of
26 compensatory damages in any Related Investor Action based on Defendant's payment of
27 disgorgement in this action, argue that he is entitled to, nor shall he further benefit by,
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offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the SEC's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the SEC directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Final Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Second Amended Complaint in this action.

VI.

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.

VII.

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

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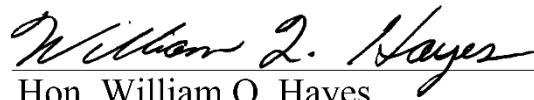
VIII.

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.

Dated: June 24, 2024


Hon. William Q. Hayes
United States District Court