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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States Securities and Exchange
10 Commission,

11 Plaintiff,

12 v.

13 Gary F Pryor, et al.,

14 Defendants.

No. CV-20-01782-PHX-DJH

CONSENT JUDGMENT

15 Pending before the Court is Plaintiff's Motion for Entry of Final Judgment as to
16 Defendants Gary Pryor; ZipRemit, Inc.; and Lendaily Inc. (Doc. 82). These Defendants
17 have consented to the entry of judgment. (Docs. 82-4; 82-5; 82-6). "Unless a consent
18 decree is unfair, inadequate, or unreasonable, it ought to be approved." *S.E.C. v. Randolph*,
19 736 F.2d 525, 529 (9th Cir. 1984). Upon review, the Court finds the proposed judgment is
20 fair, adequate, and reasonable.

21 Accordingly,

22 **IT IS HEREBY ORDERED** that Plaintiff's Motion (Doc. 82) is **granted**. There
23 being no just reason for delay, the Clerk of Court shall kindly enter the following Judgment
24 under Rule 54(b) of the Federal Rules of Civil Procedure as to Defendants Gary Pryor;
25 ZipRemit, Inc.; and Lendaily Inc..

26 **IT IS FURTHER ORDERED** that that this Court shall retain jurisdiction of this
27 matter for the purposes of enforcing the terms of this Final Judgment.

28 **IT IS FURTHER ORDERED** as follows:

FINAL JUDGMENT AS TO DEFENDANT GARY F. PRYOR

The Securities and Exchange Commission having filed an Amended Complaint and Defendant Gary F. Pryor 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 Final Judgment without admitting or denying the allegations of the Amended Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

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

1 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of
 2 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the
 3 use of any means or instruments of transportation or communication in interstate commerce
 4 or by use of the mails, directly or indirectly:

5 (a) to employ any device, scheme, or artifice to defraud;

6 (b) to obtain money or property by means of any untrue statement of a material fact or
 7 any omission of a material fact necessary in order to make the statements made, in light of
 8 the circumstances under which they were made, not misleading; or

9 (c) to engage in any transaction, practice, or course of business which operates
 10 or would operate as a fraud or deceit upon the purchaser.

11 It Is Further Ordered, Adjudged, And Decreed that, as provided in Federal Rule of
 12 Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
 13 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s
 14 officers, agents, servants, employees, and attorneys; and (b) other persons in active concert
 15 or participation with Defendant or with anyone described in (a).

16 **III.**

17 It Is Further Ordered, Adjudged, And Decreed that pursuant to Section 21(d)(5) of
 18 the Exchange Act [15 U.S.C. § 78u(d)(5)], Defendant is permanently restrained and
 19 enjoined from directly or indirectly, including, but not limited to, through any entity owned
 20 or controlled by Defendant, participating in the issuance, purchase, offer, or sale of any
 21 security in an unregistered offering, provided, however, that such injunction shall not
 22 prevent Defendant from purchasing or selling securities for his own personal account.

23 It Is Further Ordered, Adjudged, And Decreed that, as provided in Federal Rule of
 24 Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
 25 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s
 26 officers, agents, servants, employees, and attorneys; and (b) other persons in active concert
 27 or participation with Defendant or with anyone described in (a).
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1 IV.

2 It Is Further Ordered, Adjudged, And Decreed that Defendant is liable for total
3 disgorgement of \$2,666,705.63, representing net profits gained as a result of the conduct
4 alleged in the Amended Complaint, together with total prejudgment interest thereon in the
5 amount of \$753,137.50, and a civil penalty in the amount of \$2,666,705.63 pursuant to
6 Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the
7 Exchange Act [15 U.S.C. § 78u(d)(3)]. These total amounts of disgorgement and
8 prejudgment interest are broken down as follows: (i) Defendant is solely responsible for
9 paying \$2,486,186.42 in disgorgement plus prejudgment interest thereon of \$739,628.95;
10 and (ii) Defendant is responsible for paying, on a joint and several basis with Relief
11 Defendant Rebecca Pryor, \$180,519.21 in disgorgement plus prejudgment interest thereon
12 of \$13,508.55. Defendant shall satisfy this obligation by paying \$6,086,548.76 to the
13 Securities and Exchange Commission within 30 days after entry of this Final Judgment.

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

20 Enterprise Services Center
21 Accounts Receivable Branch
22 6500 South MacArthur Boulevard
23 Oklahoma City, OK 73169

24 and shall be accompanied by a letter identifying the case title, civil action number, and
25 name of this Court; Gary F. Pryor as a defendant in this action; and specifying that payment
26 is made pursuant to this Final Judgment.

27 Defendant shall simultaneously transmit photocopies of evidence of payment and
28 case identifying information to the Commission's counsel in this action. By making this

1 payment, Defendant relinquishes all legal and equitable right, title, and interest in such
2 funds and no part of the funds shall be returned to Defendant.

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

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

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

19 Regardless of whether any such Fair Fund distribution is made, amounts ordered to
20 be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the
21 government for all purposes, including all tax purposes. To preserve the deterrent effect
22 of the civil penalty, Defendant shall not, after offset or reduction of any award of
23 compensatory damages in any Related Investor Action based on Defendant's payment of
24 disgorgement in this action, argue that he is entitled to, nor shall he further benefit by,
25 offset or reduction of such compensatory damages award by the amount of any part of
26 Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any
27 Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after
28 entry of a final order granting the Penalty Offset, notify the Commission's counsel in this

1 action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair
2 Fund, as the Commission directs. Such a payment shall not be deemed an additional civil
3 penalty and shall not be deemed to change the amount of the civil penalty imposed in this
4 Judgment. For purposes of this paragraph, a “Related Investor Action” means a private
5 damages action brought against Defendant by or on behalf of one or more investors based
6 on substantially the same facts as alleged in the Amended Complaint in this action.

7 **V.**

8 It Is Further Ordered, Adjudged, And Decreed that the Consent is incorporated
9 herein with the same force and effect as if fully set forth herein, and that Defendant shall
10 comply with all of the undertakings and agreements set forth therein.

11 **VI.**

12 It Is Further Ordered, Adjudged, And Decreed that (i) solely for purposes of
13 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523,
14 the allegations in the Amended Complaint are true and deemed admitted by Defendant,
15 and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts
16 due by Defendant under this Final Judgment or any other judgment, order, consent order,
17 decree or settlement agreement entered in connection with this proceeding, is a debt for the
18 violation by Defendant of the federal securities laws or any regulation or order issued under
19 such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C.
20 §523(a)(19); (ii) any debt for disgorgement, prejudgment interest, civil penalty or other
21 amounts due by Defendant under the Final Judgment or any other judgment, order, consent
22 order, decree or settlement agreement entered in connection with this proceeding is a
23 community claim as defined under applicable state or federal law, including but not limited
24 to Sections 101(10)(C) and 541(a)(2) of the Bankruptcy Code, 11 U.S.C. §101(10)(C) and
25 541(a)(2); and (iii) with regard to any debt excepted from discharge pursuant to Section
26 523 of the Bankruptcy Code, the protection of after-acquired community property does not
27 apply to any interest of his spouse, Rebecca Pryor, in community property as set forth in
28 applicable state or federal law, including but not limited to Section 524(a)(3) of the

1 Bankruptcy Code, 11 U.S.C. §524(a)(3).

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3 **FINAL JUDGMENT AS TO DEFENDANT ZIPREMIT, INC.**

4 The Securities and Exchange Commission having filed an Amended Complaint and
5 Defendant ZipRemit, Inc. having entered a general appearance; consented to the Court's
6 jurisdiction over Defendant and the subject matter of this action; consented to entry of this
7 Final Judgment without admitting or denying the allegations of the Amended Complaint
8 (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any
9 right to appeal from this Final Judgment:

10 **I.**

11 It Is Hereby Ordered, Adjudged, And Decreed that Defendant is permanently
12 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities
13 Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5
14 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of
15 interstate commerce, or of the mails, or of any facility of any national securities exchange,
16 in connection with the purchase or sale of any security:

17 (a) to employ any device, scheme, or artifice to defraud;

18 (b) to make any untrue statement of a material fact or to omit to state a material fact
19 necessary in order to make the statements made, in the light of the circumstances under
20 which they were made, not misleading; or

21 (c) to engage in any act, practice, or course of business which operates or would operate
22 as a fraud or deceit upon any person.

23 It Is Further Ordered, Adjudged, And Decreed that, as provided in Federal Rule of
24 Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
25 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's
26 officers, agents, servants, employees, and attorneys; and (b) other persons in active concert
27 or participation with Defendant or with anyone described in (a).

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II.

It Is Hereby Further Ordered, Adjudged, And Decreed that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

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).

III.

It Is Further Ordered, Adjudged, And Decreed that Defendant is liable for disgorgement of \$1,564,534.77, representing net profits gained as a result of the conduct alleged in the Amended Complaint, together with prejudgment interest thereon in the amount of \$426,917.01, and a civil penalty in the amount of \$975,230.00 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation by paying \$2,966,681.78 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be

1 made directly from a bank account via Pay.gov through the SEC website at
2 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check,
3 bank cashier's check, or United States postal money order payable to the Securities and
4 Exchange Commission, which shall be delivered or mailed to

5 Enterprise Services Center
6 Accounts Receivable Branch
7 6500 South MacArthur Boulevard
8 Oklahoma City, OK 73169

9 and shall be accompanied by a letter identifying the case title, civil action number, and
10 name of this Court; ZipRemit, Inc. as a defendant in this action; and specifying that
11 payment is made pursuant to this Final Judgment.

12 Defendant shall simultaneously transmit photocopies of evidence of payment and
13 case identifying information to the Commission's counsel in this action. By making this
14 payment, Defendant relinquishes all legal and equitable right, title, and interest in such
15 funds and no part of the funds shall be returned to Defendant.

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

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

27 The Commission may propose a plan to distribute the Fund subject to the Court's
28 approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair

1 Final Judgment without admitting or denying the allegations of the Amended Complaint
2 (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any
3 right to appeal from this Final Judgment:

4 **I.**

5 It Is Hereby Ordered, Adjudged, And Decreed that Defendant is permanently
6 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities
7 Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5
8 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of
9 interstate commerce, or of the mails, or of any facility of any national securities exchange,
10 in connection with the purchase or sale of any security:

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

17 It Is Further Ordered, Adjudged, And Decreed that, as provided in Federal Rule of
18 Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
19 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s
20 officers, agents, servants, employees, and attorneys; and (b) other persons in active concert
21 or participation with Defendant or with anyone described in (a).

22 **II.**

23 It Is Hereby Further Ordered, Adjudged, And Decreed that Defendant is
24 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of
25 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the
26 use of any means or instruments of transportation or communication in interstate commerce
27 or by use of the mails, directly or indirectly:

- 28 (a) to employ any device, scheme, or artifice to defraud;

1 (b) to obtain money or property by means of any untrue statement of a material fact or
2 any omission of a material fact necessary in order to make the statements made, in light of
3 the circumstances under which they were made, not misleading; or

4 (c) to engage in any transaction, practice, or course of business which operates
5 or would operate as a fraud or deceit upon the purchaser.

6 It Is Further Ordered, Adjudged, And Decreed that, as provided in Federal Rule of
7 Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive
8 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's
9 officers, agents, servants, employees, and attorneys; and (b) other persons in active concert
10 or participation with Defendant or with anyone described in (a).

11 **III.**

12 It Is Further Ordered, Adjudged, And Decreed that Defendant is liable for
13 disgorgement of \$311,615.97, representing net profits gained as a result of the conduct
14 alleged in the Amended Complaint, together with prejudgment interest thereon in the
15 amount of \$52,388.26, and a civil penalty in the amount of \$975,230.00 pursuant to Section
16 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act
17 [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation by paying \$1,339,234.23
18 to the Securities and Exchange Commission within 30 days after entry of this Final
19 Judgment.

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

26 Enterprise Services Center
27 Accounts Receivable Branch
28 6500 South MacArthur Boulevard

1 Oklahoma City, OK 73169
2 and shall be accompanied by a letter identifying the case title, civil action number, and
3 name of this Court; Lendaily, Inc. as a defendant in this action; and specifying that payment
4 is made pursuant to this Final Judgment.

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

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

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

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

25 Regardless of whether any such Fair Fund distribution is made, amounts ordered to
26 be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the
27 government for all purposes, including all tax purposes. To preserve the deterrent effect
28 of the civil penalty, Defendant shall not, after offset or reduction of any award of

1 compensatory damages in any Related Investor Action based on Defendant's payment of
2 disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset
3 or reduction of such compensatory damages award by the amount of any part of
4 Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any
5 Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after
6 entry of a final order granting the Penalty Offset, notify the Commission's counsel in this
7 action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair
8 Fund, as the Commission directs. Such a payment shall not be deemed an additional civil
9 penalty and shall not be deemed to change the amount of the civil penalty imposed in this
10 Judgment. For purposes of this paragraph, a "Related Investor Action" means a private
11 damages action brought against Defendant by or on behalf of one or more investors based
12 on substantially the same facts as alleged in the Amended Complaint in this action.

13 **IV.**

14 It Is Further Ordered, Adjudged, And Decreed that the Consent is incorporated
15 herein with the same force and effect as if fully set forth herein, and that Defendant shall
16 comply with all of the undertakings and agreements set forth therein.

17 Dated this 1st day of December, 2021.

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20 
21 Honorable Diane J. Humetewa
22 United States District Judge
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