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10 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 SECURITIES AND EXCHANGE COMMISSION,
17 Plaintiff,
18 v.
19 NICHOLAS DANIEL,
20 Defendant.
21

Case No. 3:22-cv-4711

~~PROPOSED~~ FINAL JUDGMENT AS TO
DEFENDANT NICHOLAS DANIEL

22
23 The Securities and Exchange Commission having filed a Complaint and Defendant Nicholas
24 Daniel (“Defendant” or “Daniel”) having entered a general appearance; consented to the Court’s
25 jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final
26 Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction
27 and except as otherwise provided herein in paragraph IV); waived findings of fact and conclusions
28 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 FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$349,588, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$38,829, for a total of \$388,417. The Court finds that sending the disgorged funds to the United States Treasury, as ordered below, is consistent with equitable principles. The Court further imposes a civil penalty in the amount of \$349,588, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy these obligations by paying \$738,005 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

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

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

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

13 Defendant shall simultaneously transmit photocopies of evidence of payment and case
14 identifying information to the Commission's counsel in this action. By making this payment,
15 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of
16 the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this
17 Final Judgment to the United States Treasury.

18 The Commission may enforce the Court's judgment for disgorgement and prejudgment
19 interest by using all collection procedures authorized by law, including, but not limited to, moving
20 for civil contempt at any time after 30 days following entry of this Final Judgment. The
21 Commission may enforce the Court's judgment for penalties by the use of all collection procedures
22 authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*,
23 and moving for civil contempt for the violation of any Court orders issued in this action.

24 Defendant shall pay post-judgment interest on any amounts due after 30 days of the entry of
25 this Final Judgment pursuant to 28 U.S.C. § 1961.

26 III.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
28 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.

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IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the 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).

V.

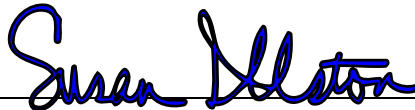
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

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.

IT IS SO ORDERED.

Dated: October 5, 2022



JUDGE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE

1 MONIQUE C. WINKLER (Cal. Bar No. 213031)
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 2 STEVEN D. BUCHHOLZ (Cal. Bar No. 202638)
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Attorneys for Plaintiff
 10 SECURITIES AND EXCHANGE COMMISSION

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 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 SECURITIES AND EXCHANGE COMMISSION, Case No. C-
 17 Plaintiff,
 18 v.
 19 NICHOLAS DANIEL,
 20 Defendant.
 21

**CONSENT TO FINAL JUDGMENT OF
 DEFENDANT NICHOLAS DANIEL**

22
 23 1. Defendant Nicholas Daniel (“Defendant” or “Daniel”) waives service of a summons
 24 and the Complaint in this action, enters a general appearance, and admits the Court’s jurisdiction
 25 over Defendant and over the subject matter of this action.

26 2. Without admitting or denying the allegations of the Complaint (except as provided
 27 herein in paragraph 11 and except as to personal and subject matter jurisdiction, which Defendant
 28

1 admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto
2 (the “Final Judgment”) and incorporated by reference herein, which, among other things:

- 3 (a) permanently restrains and enjoins Defendant from violation of Section 10(b)
4 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §
5 78j(b)], and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];
6 (b) orders Defendant to pay disgorgement in the amount of \$349,588, plus
7 prejudgment interest thereon in the amount of \$38,829, for a total of \$388,
8 417; and
9 (c) orders Defendant to pay a civil monetary penalty in the amount of \$349,588,
10 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

11 3. Defendant agrees that he shall not seek or accept, directly or indirectly,
12 reimbursement or indemnification from any source, including but not limited to payment made
13 pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays
14 pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are
15 added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees
16 that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal,
17 state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment,
18 regardless of whether such penalty amounts or any part thereof are added to a distribution fund or
19 otherwise used for the benefit of investors.

20 4. Defendant waives the entry of findings of fact and conclusions of law pursuant to
21 Rule 52 of the Federal Rules of Civil Procedure.

22 5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the
23 Final Judgment.

24 6. Defendant enters into this Consent voluntarily and represents that no threats, offers,
25 promises, or inducements of any kind have been made by the Commission or any member, officer,
26 employee, agent, or representative of the Commission to induce Defendant to enter into this
27 Consent.

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1 7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with
2 the same force and effect as if fully set forth therein.

3 8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if
4 any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby
5 waives any objection based thereon.

6 9. Defendant waives service of the Final Judgment and agrees that entry of the Final
7 Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of
8 its terms and conditions. Defendant further agrees to provide counsel for the Commission, within
9 thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or
10 declaration stating that Defendant has received and read a copy of the Final Judgment.

11 10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted
12 against Defendant in this civil proceeding. Defendant acknowledges that no promise or
13 representation has been made by the Commission or any member, officer, employee, agent, or
14 representative of the Commission with regard to any criminal liability that may have arisen or may
15 arise from the facts underlying this action or immunity from any such criminal liability. Defendant
16 waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the
17 imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's
18 entry of a permanent injunction may have collateral consequences under federal or state law and the
19 rules and regulations of self-regulatory organizations, licensing boards, and other regulatory
20 organizations. Such collateral consequences include, but are not limited to, a statutory
21 disqualification with respect to membership or participation in, or association with a member of, a
22 self-regulatory organization. This statutory disqualification has consequences that are separate from
23 any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding
24 before the Commission based on the entry of the injunction in this action, Defendant understands
25 that he shall not be permitted to contest the factual allegations of the Complaint in this action.

26 11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e),
27 which provides in part that it is the Commission's policy "not to permit a defendant or respondent to
28 consent to a judgment or order that imposes a sanction while denying the allegations in the

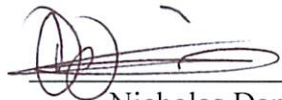
1 Complaint or order for proceedings,” and “a refusal to admit the allegations is equivalent to a denial,
2 unless the defendant or respondent states that he neither admits nor denies the allegations.” As part
3 of Defendant’s agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take
4 any action or make or permit to be made any public statement denying, directly or indirectly, any
5 allegation in the Complaint or creating the impression that the Complaint is without factual basis; (ii)
6 will not make or permit to be made any public statement to the effect that Defendant does not admit
7 the allegations of the Complaint, or that this Consent contains no admission of the allegations,
8 without also stating that Defendant does not deny the allegations; (iii) upon the filing of this
9 Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any
10 allegation in the Complaint; and (iv) stipulates solely for purposes of exceptions to discharge set
11 forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the Complaint
12 are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other
13 amounts due by Defendant under the Final Judgment or any other judgment, order, consent order,
14 decree or settlement agreement entered in connection with this proceeding, is a debt for the violation
15 by Defendant of the federal securities laws or any regulation or order issued under such laws, as set
16 forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches
17 this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this
18 action to its active docket. Nothing in this paragraph affects Defendant’s: (i) testimonial obligations;
19 or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the
20 Commission is not a party.

21 12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small
22 Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from
23 the United States, or any agency, or any official of the United States acting in his or her official
24 capacity, directly or indirectly, reimbursement of attorney’s fees or other fees, expenses, or costs
25 expended by Defendant to defend against this action. For these purposes, Defendant agrees that
26 Defendant is not the prevailing party in this action since the parties have reached a good faith
27 settlement.

1 13. Defendant agrees that the Commission may present the Final Judgment to the Court
2 for signature and entry without further notice.

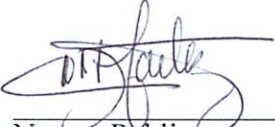
3 14. Defendant agrees that this Court shall retain jurisdiction over this matter for the
4 purpose of enforcing the terms of the Final Judgment.


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6 Dated: 06/17/2022




Nicholas Daniel

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9 On this 17th of June, 2022, Nicholas Daniel, a person known to me, personally appeared
10 before me and acknowledged executing the foregoing Consent.

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14  Consuelo M. Martinez.
15 Notary Public
Commission expires: 05/03/2025

16 Approved as to form:
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19 Telemachus P. Kasulis
Attorney for Defendant
20 Morvillo Abramowitz Grand Iason & Anello P.C.
565 Fifth Avenue
New York, NY 10017
21 Telephone: (212) 880-9555

 **Consuelo M. Martinez**
Notary Public
State of Florida
Comm# HH125526
Expires 5/3/2025

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