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CLERK OF COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 _____ : Civil Action No.
SECURITIES AND EXCHANGE COMMISSION, : CV 97-5993 RAP (JGx)
13 :
Plaintiff, :
14 :
v. : FINAL JUDGMENT OF
15 : DISGORGEMENT AND CIVIL
AMERICAN GROWTH CAPITAL CORP., : PENALTY AGAINST DEFENDANT
16 AMERICAN GROWTH FUND I, LP, : ROBERT K. KELLY
GROWTH CAPITAL RESOURCES CORP., :
17 CAPITAL GROWTH FUND I, LP, :
DONNA L. SNYDER, CHARLES E. :
18 DUQUETTE, ROBERT K. KELLY, HUGO V. :
CIANCIULLI, WILLIAM M. MCNARY, :
19 EMANUEL B. NEDWICK, JEROME L. :
GLAZOV, AND CHRISTOPHER A. PAULICK, :
20 Defendants. :
21 _____ :

ENTERED
CLERK U.S. DISTRICT COURT
AUG - 5 1998
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

22 Plaintiff Securities and Exchange Commission ("Commission"),
23 having filed and served upon Defendant Robert K. Kelly ("Kelly")
24 a Summons and Complaint in this matter and Defendant Kelly having
25 admitted service upon him of the Summons and Complaint in this
26 action and the jurisdiction of this Court over him and over the
27 subject matter of this action; having been fully advised and
28 informed of his rights to a judicial determination of this

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

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1 matter; having waived the entry of findings of fact and
2 conclusions of law as provided by Rule 52 of the Federal Rules of
3 Civil Procedure; having consented to the entry of this Final
4 Judgment of Disgorgement and Civil Penalty Against Defendant
5 Robert K. Kelly ("Final Judgment") without admitting or denying
6 the allegations in the Complaint, except as specifically set
7 forth in the Consent of Defendant Robert K. Kelly to Entry of
8 Final Judgment of Disgorgement and Civil Penalty ("Consent"); and
9 it appearing that no notice of hearing upon the entry of this
10 Final Judgment being necessary; and the Court being fully advised
11 in the premises, and there being no just reason for delay:

12 I.

13 IT IS ORDERED, ADJUDGED, AND DECREED that Defendant Kelly
14 pay disgorgement in the amount of \$23,500, plus prejudgment
15 interest thereon.

16 II.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that based upon
18 Defendant Kelly's sworn representations in his Statement of
19 Financial Condition submitted to the Commission, payment of all
20 but \$5,000 of the disgorgement and prejudgment interest thereon
21 is waived. This waiver is contingent upon the accuracy and
22 completeness of Defendant Kelly's Statement of Financial
23 Condition.

24 III.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if, at any
26 time following the entry of this Final Judgment, the Commission
27 obtains information indicating that Defendant Kelly's
28 representations to the Commission concerning his assets, income,

1 liabilities, or net worth were fraudulent, misleading,
2 inaccurate, or incomplete in any material respect as of the time
3 such representations were made, the Commission may, at its sole
4 discretion and without prior notice to Defendant, petition this
5 Court for an order requiring Defendant Kelly to pay full
6 disgorgement and prejudgment and postjudgment interest thereon,
7 less any amounts paid by Kelly as per his agreement described in
8 ¶11 of his Consent. In connection with any such petition, the
9 only issue shall be whether the financial information provided by
10 Defendant Kelly was fraudulent, misleading, inaccurate, or
11 incomplete in any material respect as of the time such
12 representations were made. In its petition, the Commission may
13 move this Court to consider all available remedies, including,
14 but not limited to, ordering Defendant to pay funds or assets,
15 directing the forfeiture of any assets, or sanctions for contempt
16 of this Final Judgment, and the Commission may also request
17 additional discovery. Defendant Kelly may not, by way of defense
18 to such petition, challenge the validity of his Consent or the
19 Final Judgment, contest the allegations in the Complaint filed by
20 the Commission, contest the amount of disgorgement and interest,
21 or assert that disgorgement should not be ordered.

22 IV.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon
24 Defendant Kelly's representations to the Commission, under oath,
25 that he is financially unable to pay a penalty, the Court is not
26 ordering Defendant Kelly to pay a penalty. The Court does,
27 however, note the appropriateness of a civil penalty in this
28 instance. The determination that Defendant Kelly is unable to

1 pay a civil penalty is conditioned on the accuracy and
2 completeness of Kelly's financial statement and affidavit
3 submitted to the Commission. If, at any time following the entry
4 of this Order of Permanent Injunction, the Commission obtains
5 information that, in statements made by Kelly to the Commission,
6 Kelly materially understated his assets or income or materially
7 overstated his liabilities or expenses, or that Kelly willfully
8 omitted assets or income in any amount, the Commission may
9 petition the Court for a hearing to determine whether further
10 sanctions are appropriate in light of any understatement,
11 overstatements, or willful omissions. In connection with such
12 petition, the Commission may request the Court to order Kelly to
13 pay a penalty for the violations alleged in the Complaint. In
14 its petition, the Commission also may seek any additional
15 remedies, or request further discovery. Kelly may not by way of
16 defense to that petition, contest the allegations in the
17 Complaint or assert that no penalty is appropriate for the
18 violations alleged in the Complaint.

19 V.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
21 provisions of the Consent filed concurrently with this Final
22 Judgment are incorporated herein with the same force and effect
23 as if fully set forth herein and that Kelly shall comply with his
24 Consent.

25 VI.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court
27 shall retain jurisdiction over this action to implement and
28 enforce the terms of the Final Judgment and other decrees that

1 may be entered herein and to grant such other relief as the Court
2 may deem necessary and just.

3 * * * * *

4 There being no just reason for delay, the Clerk of the Court
5 is hereby directed, pursuant to Rule 54(b) of the Federal Rules
6 of Civil Procedure, to enter this Final Judgment forthwith.

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9 DATED: AUG 3 1998

RICHARD A. PAEZ
UNITED STATES DISTRICT JUDGE

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