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SECURITIES AND EXCHANGE COMMISSION

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE)	Case No. 3:17-cv-02086-JAH-JLB
COMMISSION,)	
)	ORDER FOR DEFAULT
Plaintiff,)	JUDGMENT AS TO DEFENDANT
vs.)	GERARDO DE NICOLÁS
)	GUTIERREZ
GERARDO DE NICOLÁS)	
GUTIERREZ, CARLOS JAVIER)	
MOCTEZUMA VELASCO, RAMÓN))	
LAFARGA BÁTIZ, and NOE)	
CORRALES REYES,)	
)	
Defendants.)	
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1 The Securities and Exchange Commission (the “SEC” or “Commission”) having
2 filed a First Amended Complaint, Defendant Gerardo de Nicolás Gutiérrez (“Defendant”)
3 having been duly served a summons and the First Amended Complaint, but failed to answer
4 or otherwise defend, the Clerk of the Court having entered a default against the Defendant,
5 and the SEC having duly noticed its Motion for Default Judgment against the Defendant
6 under Rule 55(b)(2) of the Federal Rules of Civil Procedure and Defendant having failed
7 to oppose said motion and failed to appear in court for the hearing on the same, and for the
8 reasons stated on the record and good cause appearing, this Court enters the following
9 Default Judgment against the Defendant:

10 I.

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant is
12 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of
13 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the
14 use of any means or instruments of transportation or communication in interstate commerce
15 or by use of the mails, directly or indirectly:

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

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

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

22 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as provided
23 in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the
24 following who receive actual notice of this Default Judgment by personal service or
25 otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b)
26 other persons in active concert or participation with any Defendant or with anyone
27 described in (a).
28

II.

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is
2 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of
3 the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule
4 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or
5 instrumentality of interstate commerce, or of the mails, or of any facility of any national
6 securities exchange, in connection with the purchase or sale of any security:

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

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

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

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

19 III.

20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is
21 permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act
22 [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1] by
23 knowingly circumventing or knowingly failing to implement a system of internal
24 accounting controls or knowingly falsifying any book, record, or account and directly or
25 indirectly falsifying or causing to be falsified any book, record, or account described in
26 Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

27 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, as provided
28 in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the

1 following who receive actual notice of this Default Judgment by personal service or
2 otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b)
3 other persons in active concert or participation with any Defendant or with anyone
4 described in (a).

5 IV.

6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is
7 permanently restrained and enjoined from violating Exchange Act Rule 13b2-2 [17 C.F.R.
8 § 240.13b2-2] by directly or indirectly, and in connection with any audit or examination of
9 the financial statements of an issuer and the preparation and filing of statements and reports
10 required to be filed with the Commission, making or causing to be made materially false
11 or misleading statements to accountants and omitting to state, or causing another person to
12 omit to state to accountants, material facts necessary in order to make statements made to
13 the accountants, in light of the circumstances under which such statements were made, not
14 misleading.

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

21 V.

22 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is
23 permanently restrained and enjoined from violating Exchange Act Rule 13a-14 [17 C.F.R.
24 § 240.13a-14] which requires that for each report filed under Section 13(a) of the Exchange
25 Act [15 U.S.C. § 78m(a)], or a report on Form 20-F filed under 17 C.F.R. § 240.13a-19,
26 each principal executive and principal financial officer of the issuer must make a
27 certification as to the accuracy of the financial statements within the report and that the
28 report is not false or misleading.

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

7
8 VI.

9 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
10 Defendant is permanently restrained and enjoined from aiding and abetting any violation
11 of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and
12 13a-16 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a.16] by knowingly or
13 recklessly providing substantial assistance to an issuer that files with the Commission
14 reports required under Rules 13a-1 and 13a-16 that do not contain any untrue statement of
15 a material fact or omit to state a material fact necessary in order to make the statements
16 made, in light of the circumstances under which such statements were made, not
17 misleading.

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

24 VII.

25 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
26 Defendant is permanently restrained and enjoined from aiding and abetting any violation
27 of Sections 13(b)(2)(A) and (B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)]
28 by knowingly or recklessly providing substantial assistance to an issuer that fails to make
or keep books, records and accounts that in reasonable detail accurately and fairly reflected

1 its transactions and the disposition of its assets or fails to devise and maintain a system of
2 internal accounting controls sufficient to provide reasonable assurances that the issuer's
3 corporate transactions were executed in accordance with management's authorization and
4 in a manner to permit the preparation of financial statements in conformity with GAAP.

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

11 VIII.

12 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is
13 permanently restrained and enjoined from, directly or indirectly, controlling any person
14 who violates Exchange Act Sections 13(a)[15 U.S.C. § 78m(a)]; 13(b)(2)(A) and
15 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and (B)]; and Exchange Act Rules 12b-20, 13a-1
16 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a.16], unless Defendant acts
17 in good faith and does not directly or indirectly induce the act or acts constituting the
18 violation.

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

25 IX.

26 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that, pursuant to
27 Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant is prohibited
28 from acting as an officer or director of any issuer that has a class of securities registered

1 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or that is required to file
2 reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

3 X.

4 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that
5 Defendant is liable for disgorgement of \$851,318, representing net profits gained as a result
6 of the conduct alleged in the First Amended Complaint, together with prejudgment interest
7 thereon in the amount of \$301,734, and a civil penalty in the amount of \$12,407,200.
8 Defendant shall satisfy his obligation by paying \$13,560,252 to the Securities and
9 Exchange Commission within 30 days after entry of this Default Judgment.

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

16 Enterprise Services Center

17 Accounts Receivable Branch

18 6500 South MacArthur Boulevard

19 Oklahoma City, OK 73169 and shall be accompanied by a letter identifying the case
20 title, civil action number, and name of this Court; Gerardo de Nicolás Gutiérrez as a
21 defendant in this action; and specifying that payment is made pursuant to this Default
22 Judgment.

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

27 The Commission may enforce the Court's judgment for disgorgement and
28 prejudgment interest by using all collection procedures authorized by law, including, but

1 not limited to, moving for civil contempt at any time after 30 days following entry of this
2 Default Judgment.

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

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

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

1 damages action brought against any Defendant by or on behalf of one or more investors
2 based on substantially the same facts as alleged in the Complaint in this action.

3 XI.

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 Defendant, and
7 further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts
8 due by any Defendant under this Default Judgment or any other judgment, order, consent
9 order, decree or settlement agreement entered in connection with this proceeding, is a debt
10 for the violation by Defendant of the federal securities laws or any regulation or order
11 issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11
12 U.S.C. §523(a)(19).

13 XII.

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 Default
16 Judgment.

17 XIII.

18 For the reasons stated on the record and good cause appearing, pursuant to Rule
19 54(b) of the Federal Rules of Civil Procedure, **IT IS HEREBY ORDERED** the Clerk of
20 Court shall enter this Default Judgment forthwith and without further notice.

21 **IT IS SO ORDERED.**

22 Dated: June 29, 2021

23
24
25 
26 _____
27 JOHN A. HOUSTON
28 UNITED STATES DISTRICT JUDGE