

THE HONORABLE RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,  
vs.  
KIRK SPERRY, and  
SPERRY AND SONS CAPITAL INVESTMENTS,  
LLC,  
Defendants.

Civil Action No. 2:20-cv-01337-RSM

**CONSENT OF DEFENDANT SPERRY  
AND SONS CAPITAL INVESTMENTS,  
LLC**

1. Defendant Sperry and Sons Capital Investments, LLC (“Defendant”) acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 11 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the Judgment in the form attached hereto (the “Judgment”) and incorporated by reference herein, which, among other

1 things, permanently restrains and enjoins Defendant from violation of Section 10(b) of the  
2 Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5  
3 promulgated thereunder [17 C.F.R. § 240.10b-5] and Section 17(a) of the Securities Act of  
4 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)].

5 3. Defendant agrees that the Court shall order disgorgement of ill-gotten gains,  
6 prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities  
7 Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].  
8 Defendant further agrees that the amounts of the disgorgement and civil penalty shall be  
9 determined by the Court upon motion of the Commission, and that prejudgment interest shall  
10 be calculated from September 24, 2015, based on the rate of interest used by the Internal  
11 Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. §  
12 6621(a)(2). Defendant further agrees that in connection with the Commission’s motion for  
13 disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant  
14 will be precluded from arguing that it did not violate the federal securities laws as alleged in  
15 the Complaint; (b) Defendant may not challenge the validity of this Consent or the Judgment;  
16 (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted  
17 as and deemed true by the Court; and (d) the Court may determine the issues raised in the  
18 motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative  
19 testimony, and documentary evidence, without regard to the standards for summary judgment  
20 contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the  
21 Commission’s motion for disgorgement and/or civil penalties, the parties may take discovery,  
22 including discovery from appropriate non-parties.

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

25 5. Defendant waives the right, if any, to a jury trial and to appeal from the entry  
26 of the Judgment.

27 6. Defendant enters into this Consent voluntarily and represents that no threats,  
28 offers, promises, or inducements of any kind have been made by the Commission or any

1 member, officer, employee, agent, or representative of the Commission to induce Defendant  
2 to enter into this Consent.

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

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

8 9. Defendant waives service of the Judgment and agrees that entry of the  
9 Judgment by the Court and filing with the Clerk of the Court will constitute notice to  
10 Defendant of its terms and conditions.

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

28 11. Defendant understands and agrees to comply with the terms of 17 C.F.R.

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

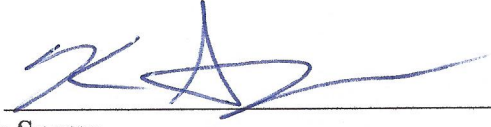
24 12. Defendant hereby waives any rights under the Equal Access to Justice Act, the  
25 Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law  
26 to seek from the United States, or any agency, or any official of the United States acting in his  
27 or her official capacity, directly or indirectly, reimbursement of attorney’s fees or other fees,  
28 expenses, or costs expended by Defendant to defend against this action. For these purposes,

1 Defendant agrees that Defendant is not the prevailing party in this action since the parties  
2 have reached a good faith settlement.

3 13. Defendant agrees that the Commission may present the Judgment to the Court  
4 for signature and entry without further notice.

5 14. Defendant agrees that this Court shall retain jurisdiction over this matter for  
6 the purpose of enforcing the terms of the Judgment.

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8 Sperry and Sons Capital Investments, LLC

9  
10 By:   
11 Kirk Sperry  
12 Principal and Owner, Sperry and Sons Capital  
13 Investments, LLC

14 Approved as to form:

15 **Edward P. Weigelt,**  
16 **Jr**

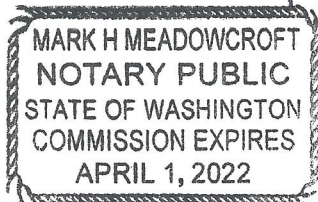
Digitally signed by Edward P. Weigelt, Jr  
DN: cn=Edward P. Weigelt, Jr, o, ou=Commercial  
Law Group, PS, email=eweigeltjr@msn.com,  
c=US  
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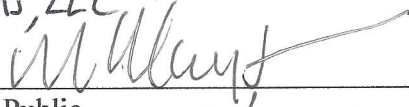
17 Edward P. Weigelt, Jr. Esq.  
18 Law Offices of Edward P. Weigelt, Jr.  
9222 36th Ave. S.E.  
Everett, WA 98208  
(425) 346-1646

19 Attorney for Defendant Sperry and Sons Capital Investments, LLC

20  
21 On \_\_\_\_\_, 2021, \_\_\_\_\_, a person known to  
22 me, personally appeared before me and acknowledged executing the foregoing Consent with  
23 full authority to do so on behalf of Sperry & Sons as its Managing Member

Capital Investments, LLC



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26 Notary Public  
27 Commission expires: 4/1/22  
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THE HONORABLE RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

<p>SECURITIES AND EXCHANGE COMMISSION,  Plaintiff,  vs.  KIRK SPERRY, and SPERRY AND SONS CAPITAL INVESTMENTS, LLC,  Defendants.</p>	<p>Civil Action No. 2:20-cv-01337-RSM  <b>[PROPOSED] JUDGMENT AS TO DEFENDANT SPERRY AND SONS CAPITAL INVESTMENTS, LLC</b></p>
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The Securities and Exchange Commission having filed a Complaint and Defendant Sperry and Sons Capital Investments, LLC (“Sperry and Sons” or “Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over it and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph V); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

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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 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 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,

1 not misleading; or

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

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

9 III.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that  
11 Defendant shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil  
12 penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section  
13 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Court shall determine the amounts  
14 of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest  
15 shall be calculated from September 24, 2015, based on the rate of interest used by the Internal  
16 Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C.  
17 § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil  
18 penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from  
19 arguing that it did not violate the federal securities laws as alleged in the Complaint; (b)  
20 Defendant may not challenge the validity of the Consent or this Judgment; (c) solely for the  
21 purposes of such motion, the allegations of the Complaint shall be accepted as and deemed  
22 true by the Court; and (d) the Court may determine the issues raised in the motion on the basis  
23 of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and  
24 documentary evidence, without regard to the standards for summary judgment contained in  
25 Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's  
26 motion for disgorgement and/or civil penalties, the parties may take discovery, including  
27 discovery from appropriate non-parties.



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IV.

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.

V.

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 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).

VI.

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 Judgment.

VII.

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 Judgment forthwith and without further notice.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Ricardo S. Martinez  
UNITED STATES DISTRICT JUDGE