

JS-6

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

ANDREW L. FASSARI,

Defendant.

Case No. SACV 21-00403-JVS(ADSx)
Honorable James V. Selna

**JUDGMENT AS TO ANDREW L.
FASSARI**

The Securities and Exchange Commission having filed a Complaint and Defendant Andrew L. Fassari 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 Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph IX); waived findings of fact and conclusions of law; and waived any right to appeal from this 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

1 instrumentality of interstate commerce, or of the mails, or of any facility of any national
2 securities exchange, in connection with the purchase or sale of any security:

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

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

15 II.

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

- 21 (a) to employ any device, scheme, or artifice to defraud;
22 (b) to obtain money or property by means of any untrue statement of a material fact or
23 any omission of a material fact necessary in order to make the statements made, in
24 light of the circumstances under which they were made, not misleading; or
25 (c) to engage in any transaction, practice, or course of business which operates or
26 would operate as a fraud or deceit upon the purchaser.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
28 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)

1 other persons in active concert or participation with Defendant or with anyone described
2 in (a).

3 III.

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
5 Defendant is liable for disgorgement of \$457,110.00, representing net profits gained as a
6 result of the conduct alleged in the Complaint, together with prejudgment interest thereon
7 in the amount of \$8,007.00, and a civil penalty in the amount of \$195,047.00 pursuant to
8 Section 20(d)(2)(C) of the Securities Act and Section 21(d)(3)(B)(iii) of the Exchange Act
9 [15 U.S.C. §§ 77t(d) and 78u(d)(3)] as adjusted for inflation. Defendant shall satisfy this
10 obligation by paying \$660,164.00 to the Securities and Exchange Commission pursuant to
11 the terms of the payment schedule set forth in paragraph VI below after entry of this Final
12 Judgment.

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

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

22 and shall be accompanied by a letter identifying the case title, civil action number, and
23 name of this Court; Andrew L. Fassari as a defendant in this action; and specifying that
24 payment is made pursuant to this Final Judgment.

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

The Commission may enforce the Court’s judgment for disgorgement and

1 prejudgment interest by using all collection procedures authorized by law, including, but
2 not limited to, moving for civil contempt at any time after 30 days following entry of this
3 Final Judgment.

4 The Commission may enforce the Court's judgment for penalties by the use of all
5 collection procedures authorized by law, including the Federal Debt Collection
6 Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation
7 of any Court orders issued in this action. Defendant shall pay post judgment interest on
8 any amounts due after 30 days of the entry of this Judgment pursuant to 28 U.S.C. § 1961.

9 The Commission shall hold the funds, together with any interest and income earned
10 thereon (collectively, the "Fund"), pending further order of the Court. The Commission
11 may propose a plan to distribute the Fund subject to the Court's approval. Such a plan
12 may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of
13 Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction
14 over the administration of any distribution of the Fund and the Fund may only be
15 disbursed pursuant to an Order of the Court.

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

IV.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that within 3 days after being served with a copy of the Judgment, E*Trade Securities L.L.C. (“Broker”) shall transfer the entire balance of the following Broker accounts which were frozen pursuant to an Order of this Court to the Commission:

<u>Account Owner</u>	<u>Acct. Ending in:</u>
Andrew L. Fassari	*0255
Andrew L. Fassari	*3014

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

Enterprise Services Center
Accounts Receivable Branch
6500 MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; and specifying that payment is made pursuant to this Judgment.

V.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that within 3 days after being served with a copy of the Judgment, Wells Fargo Bank, N.A. (“Bank”) shall transfer the entire balance of the following Bank accounts which were frozen pursuant to an Order of this Court to the Commission:

<u>Account Owner</u>	<u>Acct. Ending in:</u>
Andrew L. Fassari	*2934

Bank may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Bank also may transfer these funds by

1 certified check, bank cashier's check, or United States postal money order payable to the
2 Securities and Exchange Commission, which shall be delivered or mailed to

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

7 and shall be accompanied by a letter identifying the case title, civil action number, and
8 name of this Court; and specifying that payment is made pursuant to this Judgment.

9 VI.

10 Defendant Fassari shall pay the total of disgorgement, prejudgment interest, and
11 penalty due of \$660,164.00 in two installments to the Commission according to the
12 following schedule: (1) \$538,580.00 consisting of all funds held in Defendant's
13 Brokerage and Bank accounts identified in paragraphs IV. and V. within 30 days of entry
14 of this Final Judgment; and (2) \$121,584.00 within 365 days after entry of this Final
15 Judgment. Payments shall be deemed made on the date they are received by the
16 Commission and shall be applied first to post judgment interest, which accrues pursuant to
17 28 U.S.C. § 1961 on any unpaid amounts due after 30 days of the entry of Final Judgment.
18 Prior to making the final payment set forth herein, Defendant Fassari shall contact the
19 staff of the Commission for the amount of post judgment interest and principal due for the
20 final payment.

21 If Defendant Fassari fails to make any payment by the date agreed and/or in the
22 amount agreed according to the schedule set forth above, all outstanding payments under
23 this Final Judgment, including post-judgment interest, minus any payments made, shall
24 become due and payable immediately at the discretion of the staff of the Commission
25 without further application to the Court.

26 VII.

27 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
28 Defendant shall be subject to a penny stock bar pursuant to Section 20(g) of the Securities
Act [15 U.S.C. § 77t(g)] and Section 21(d)(6) of the Exchange Act [15 U.S.C. §
78u(d)(6)]. The Court shall determine the terms of the penny stock bar upon motion of
the Commission. In connection with the Commission's motion for imposition of a penny

1 stock bar, and at any hearing held on such a motion: (a) Defendant will be precluded from
2 arguing that he did not violate the federal securities laws as alleged in the Complaint; (b)
3 Defendant may not challenge the validity of this Consent or the Judgment; (c) solely for
4 the purposes of such motion, the allegations of the Complaint shall be accepted as and
5 deemed true by the Court; and (d) the Court may determine the issues raised in the motion
6 on the basis of affidavits, declarations, excerpts of sworn deposition or investigative
7 testimony, and documentary evidence, without regard to the standards for summary
8 judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection
9 with the Commission’s motion for a penny stock bar, the parties may take discovery,
10 including discovery from appropriate non-parties.

11 VIII.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to his
13 Consent, Defendant shall dismiss his appeal pending in SEC v. Fassari, 21-55575 (9th
14 Cir.).

15 IX.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
17 incorporated herein with the same force and effect as if fully set forth herein.

18 X.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
20 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11
21 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant, and
22 further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts
23 due by Defendant under this Judgment or any other judgment, order, consent order, decree
24 or settlement agreement entered in connection with this proceeding, is a debt for the
25 violation by Defendant of the federal securities laws or any regulation or order issued
26 under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §
27 523(a)(19).

28 XI.

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.

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XII.

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.

IT IS SO ORDERED.

DATED: August 25, 2021



Honorable James V. Selna

UNITED STATES DISTRICT JUDGE

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