

1 CHRISTINE NESTOR, Fla. Bar No. 597211

2 Email: nestorc@sec.gov

3 STEPHANIE N. MOOT, Fla. Bar No. 30377

4 Email: moots@sec.gov

5 ANDREW O. SCHIFF, Pa. Bar No. 43641

6 Email: schiffa@sec.gov

7 Attorneys for Plaintiff

8 Securities and Exchange Commission

9 801 Brickell Avenue, Suite 1950

10 Miami, FL 33131

11 Telephone: (305) 982-6300

12 Facsimile: (305) 516-4154

13 LOCAL COUNSEL

14 DONALD W. SEARLES, Cal. Bar No. 135705

15 Email: searlesd@sec.gov

16 Securities and Exchange Commission

17 444 S. Flower Street, Suite 900

18 Los Angeles, CA 90071

19 Telephone: (323) 965-3398

20 Facsimile: (213) 443-1904

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 CV 18-10481 FMO (JCx)

24 SECURITIES AND EXCHANGE
25 COMMISSION,

26 Plaintiff,

27 vs.

28 ROBERT DAVIS, JR., et al.

Defendants.

**FINAL JUDGMENT AS TO
DEFENDANT ROBERT S. "LUTE"
DAVIS, JR.**

29 This cause comes before the Court upon the Unopposed Motion by Plaintiff
30 Securities and Exchange Commission for Entry of Final Judgments against Certain

1 Defendants (“Motion”). By the Consent attached hereto, and without admitting or denying
2 the allegations of the Amended Complaint (except as to subject matter and personal
3 jurisdiction, which are admitted, and except as provided in paragraph IV herein), Robert S.
4 “Lute” Davis, Jr. (“Davis” or “Defendant”) has: entered a general appearance; consented
5 to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived
6 any right to appeal from this Final Judgment. The Court finds that good cause exists for
7 entry of the Final Judgment. Accordingly, the Commission’s Motion is **GRANTED**. The
8 Court further orders as follows:

9 **I.**

10 **DISGORGEMENT, PREJUDGMENT INTEREST, AND CIVIL PENALTY**

11 **IT IS ORDERED, ADJUDGED, AND DECREED** that Davis is liable for
12 disgorgement of \$173,304.67 representing net profits gained as a result of the conduct
13 alleged in the Amended Complaint, together with prejudgment interest thereon in the
14 amount of \$43,452.91, and a civil penalty in the amount of \$50,000 pursuant to Section
15 20(d) of the Securities Act of 1933 (“Securities Act”) and Section 21(d)(3) of the Securities
16 Exchange Act of 1934 (“Exchange Act”). Defendant shall satisfy this obligation by paying
17 \$266,757.58 to the Securities and Exchange Commission pursuant to the terms of the
18 payment schedule set forth in paragraph II below after entry of this Final Judgment.

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

25 Enterprise Services Center
26 Accounts Receivable Branch
27 6500 South MacArthur Boulevard
28 Oklahoma City, OK 73169

1 and shall be accompanied by a letter identifying the case title, civil action number, and
2 name of this Court; Davis as a defendant in this action; and specifying that payment is
3 made pursuant to this Final Judgment.

4 Defendant shall simultaneously transmit photocopies of evidence of payment and
5 case identifying information to the Commission's counsel in this action. By making this
6 payment, Defendant relinquishes all legal and equitable right, title, and interest in such
7 funds and no part of the funds shall be returned to Defendant.

8 The Commission may enforce the Court's judgment for disgorgement and
9 prejudgment interest by using all collection procedures authorized by law, including, but
10 not limited to, moving for civil contempt at any time after 30 days following entry of this
11 Final Judgment.

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

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

24 Regardless of whether any such Fair Fund distribution is made, amounts ordered to
25 be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the
26 government for all purposes, including all tax purposes. To preserve the deterrent effect
27 of the civil penalty, Defendant shall not, after offset or reduction of any award of
28 compensatory damages in any Related Investor Action based on Defendant's payment of

1 disgorgement in this action, argue that he is entitled to, nor shall he further benefit by,
2 offset or reduction of such compensatory damages award by the amount of any part of
3 Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any
4 Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after
5 entry of a final order granting the Penalty Offset, notify the Commission's counsel in this
6 action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair
7 Fund, as the Commission directs. Such a payment shall not be deemed an additional civil
8 penalty and shall not be deemed to change the amount of the civil penalty imposed in this
9 Judgment. For purposes of this paragraph, a "Related Investor Action" means a private
10 damages action brought against Defendant by or on behalf of one or more investors based
11 on substantially the same facts as alleged in the Complaint in this action.

12 II.

13 PAYMENT PLAN

14 Davis shall pay the total of disgorgement, prejudgment interest, and penalty due of
15 \$266,757.58 in 2 installments to the Commission according to the following schedule: (1)
16 \$100,000 within 3 days of entry of this Final Judgment; and (2) \$166,757.58 due by
17 December 31, 2021. Payments shall be deemed made on the date they are received by the
18 Commission and shall be applied first to post judgment interest, which accrues pursuant to
19 28 U.S.C. § 1961 on any unpaid amounts due after 30 days of the entry of Final Judgment.
20 Prior to making the final payment set forth herein, Davis shall contact the staff of the
21 Commission for the amount due for the final payment.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

INCORPORATION OF CONSENT

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 Davis shall comply with all of the undertakings and agreements set forth therein.

IV.

BANKRUPTCY NONDISCHARGEABILITY

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.

RETENTION OF JURISDICTION

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.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of

1 Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and
2 without further notice.

3
4 **DONE and ORDERED** in Chambers, Los Angeles California, this 21st day of
5 January, 2021.

6
7 */s/*

8 _____
9 FERNANDO M. OLGUIN
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28