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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

DANIEL MARKEL,

Defendant

Case No.: 2:20-cv-00502- ODW (SSx)

**FINAL JUDGMENT AS TO
DEFENDANT DANIEL MARKEL**

1 The Securities and Exchange Commission having filed a Complaint and
2 defendant Daniel Markel (“Defendant”) having entered a general appearance;
3 consented to the Court’s jurisdiction over Defendant and the subject matter of this
4 action; consented to entry of this Final Judgment without admitting or denying the
5 allegations of the Complaint (except as to jurisdiction and except as otherwise
6 provided herein in paragraph VI); waived findings of fact and conclusions of law; and
7 waived any right to appeal from this Final Judgment:

8 **I.**

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
10 permanently restrained and enjoined from violating Sections 17(a)(2) and 17(a)(3) of
11 the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77q(a)(2) and
12 77q(a)(3)] in the offer or sale of any security by the use of any means or instruments
13 of transportation or communication in interstate commerce or by use of the mails,
14 directly or indirectly: (a) to obtain money or property by means of any untrue
15 statement of a material fact or any omission of a material fact necessary in order to
16 make the statements made, in light of the circumstances under which they were made,
17 not misleading, or (b) to engage in any transaction, practice, or course of business
18 which operates or would operate as a fraud or deceit upon the purchaser.

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

25 **II.**

26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
27 permanently restrained and enjoined from violating Section 5 of the Securities Act
28

1 [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable
2 exemption:

- 3 (a) Unless a registration statement is in effect as to a security, making use of
4 any means or instruments of transportation or communication in
5 interstate commerce or of the mails to sell such security through the use
6 or medium of any prospectus or otherwise;
- 7 (b) Unless a registration statement is in effect as to a security, carrying or
8 causing to be carried through the mails or in interstate commerce, by any
9 means or instruments of transportation, any such security for the purpose
10 of sale or for delivery after sale; or
- 11 (c) Making use of any means or instruments of transportation or
12 communication in interstate commerce or of the mails to offer to sell or
13 offer to buy through the use or medium of any prospectus or otherwise
14 any security, unless a registration statement has been filed with the
15 Commission as to such security, or while the registration statement is the
16 subject of a refusal order or stop order or (prior to the effective date of
17 the registration statement) any public proceeding or examination under
18 Section 8 of the Securities Act [15 U.S.C. § 77h].

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

25 **III.**

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
27 Defendant is liable for disgorgement of \$439,678, representing profits gained as a
28 result of the conduct alleged in the Complaint, together with prejudgment interest

1 thereon in the amount of \$65,224, for a total of \$504,902. Defendant shall satisfy this
2 obligation by paying \$504,902 to the Securities and Exchange Commission within 30
3 days after entry of this Final Judgment.

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

10 Enterprise Services Center
11 Accounts Receivable Branch
12 6500 South MacArthur Boulevard
13 Oklahoma City, OK 73169

14 and shall be accompanied by a letter identifying the case title, civil action number,
15 and name of this Court; Daniel Markel as a defendant in this action; and specifying
16 that payment is made pursuant to this Final Judgment.

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

21 The Commission shall hold the funds (collectively, the "Fund") and may
22 propose a plan to distribute the Fund subject to the Court's approval. The Court shall
23 retain jurisdiction over the administration of any distribution of the Fund. If the
24 Commission staff determines that the Fund will not be distributed, the Commission
25 shall send the funds paid pursuant to this Final Judgment to the United States
26 Treasury.

27 The Commission may enforce the Court's judgment for disgorgement and
28 prejudgment interest by moving for civil contempt (and/or through other collection

1 procedures authorized by law) at any time after 30 days following entry of this Final
2 Judgment. Defendant shall pay post-judgment interest on any delinquent amounts
3 pursuant to 28 U.S.C. § 1961.

4 **IV.**

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
6 shall pay a civil penalty in the amount of \$189,427 to the Securities and Exchange
7 Commission pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d).
8 Defendant shall make this payment within 30 days after entry of this Final Judgment.

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

15 Enterprise Services Center

16 Accounts Receivable Branch

17 6500 South MacArthur Boulevard

18 Oklahoma City, OK 73169

19 and shall be accompanied by a letter identifying the case title, civil action number,
20 and name of this Court; Daniel Markel as a defendant in this action; and specifying
21 that payment is made pursuant to this Final Judgment.

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

26 The Commission may enforce the Court's judgment for disgorgement and
27 prejudgment interest by moving for civil contempt (and/or through other collection
28 procedures authorized by law) at any time after 30 days following entry of this Final

1 Judgment. Defendant shall pay post-judgment interest on any delinquent amounts
2 pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with
3 any interest and income earned thereon (collectively, the “Fund”), pending further
4 order of the Court.

5 The Commission may propose a plan to distribute the Fund subject to the
6 Court’s approval. Such a plan may provide that the Fund shall be distributed
7 pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of
8 2002. The Court shall retain jurisdiction over the administration of any distribution
9 of the Fund. If the Commission staff determines that the Fund will not be distributed,
10 the Commission shall send the funds paid pursuant to this Final Judgment to the
11 United States Treasury.

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

3 **V.**

4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that within 3
5 days after being served with a copy of this Final Judgment, the law firm Holmes,
6 Taylor, Scott & Jones, LLP (“HTS&J”) shall transfer the entire balance of any and all
7 monies received from Defendant Markel, or held for the benefit of Markel, to the
8 Commission. HTS&J may transmit payment electronically to the Commission,
9 which will provide detailed ACH transfer/Fedwire instructions upon request.

10 Payment may also be made directly from a bank account via Pay.gov through the
11 SEC website at <http://www.sec.gov/about/offices/ofm.htm>. HTS&J also may transfer
12 these funds by certified check, bank cashier’s check, or United States postal money
13 order payable to the Securities and Exchange Commission, which shall be delivered
14 or mailed to

15 Enterprise Services Center
16 Accounts Receivable Branch
17 6500 South MacArthur Boulevard
18 Oklahoma City, OK 73169

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

22 **VI.**

23 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
24 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
25 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant,
26 and further, any debt for disgorgement, prejudgment interest, civil penalty, or other
27 amounts due by Defendant under this Final Judgment or any other judgment, order,
28 consent order, decree or settlement agreement entered in connection with this

1 proceeding, is a debt for the violation by Defendant of the federal securities laws or
2 any regulation or order issued under such laws, as set forth in Section 523(a)(19) of
3 the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

4 **VII.**

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
6 Consent is incorporated herein with the same force and effect as if fully set forth
7 herein, and that Defendant shall comply with all of the undertakings and agreements
8 set forth therein.


9 **VII.**

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
11 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
12 Final Judgment.

13 **IX.**

14 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
15 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith
16 and without further notice.

17 Dated: January 22, 2020

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20 OTIS D. WRIGHT, II
21 UNITED STATES DISTRICT JUDGE
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