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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Case No.2:09-CV-00665-LKK-DAD

Plaintiff,

JUDGMENT OF PERMANENT
INJUNCTION AND OTHER RELIEF
AGAINST DEFENDANT KENNETH
KENITZER

ANTHONY VASSALLO, KENNETH KENITZER
and EQUITY INVESTMENT MANAGEMENT
AND TRADING, INC.,

Defendants.

The Securities and Exchange Commission (“Commission”) having filed a Complaint in this matter and defendant Kenneth Kenitzer (“Defendant”) having entered a general appearance and executed a Consent of Defendant Kenneth Kenitzer to Judgment of Permanent Injunction and Other Relief (“Consent”), in which among other things, Defendant consented to the Court’s jurisdiction over him and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations in the Complaint

SEC v. VASSALLO, ET AL.
CASE No. 2:09-CV-00665-LKK-DAD

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[PROPOSED] JUDGMENT OF PERMANENT
INJUNCTION AND OTHER RELIEF AGAINST
DEFENDANT KENNETH KENITZER

1 (except as to jurisdiction, which Defendant admits); waived findings of fact and conclusions
2 of law; and waived any right to appeal from this Judgment:

3 I.

4 IT IS ORDERED THAT defendant Kenneth Kenitzer and his agents, servants,
5 employees, attorneys, and those persons in active concert or participation with any of them,
6 who receive actual notice of this Judgment, by personal service or otherwise, and each of
7 them, are permanently restrained and enjoined from, in the offer or sale of any securities, by
8 the use of any means or instruments of transportation or communication in interstate
9 commerce or by the use of the mails, directly or indirectly:

- 10 A. employing any device, scheme, or artifice to defraud; or
- 11 B. obtaining money or property by means of any untrue statement of a material
12 fact or any omission to state a material fact necessary in order to make the
13 statements made, in light of the circumstances under which they were made,
14 not misleading; or
- 15 C. engaging in any transaction, practice, or course of business which operates or
16 would operate as a fraud or deceit upon the purchaser;

17 in violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §
18 77q(a)].

19 II.

20 IT IS FURTHER ORDERED THAT defendant Kenneth Kenitzer and his agents,
21 servants, employees, attorneys, and those persons in active concert or participation with any
22 of them, who receive actual notice of this Judgment, by personal service or otherwise, and
23 each of them, are permanently restrained and enjoined from, directly or indirectly, by the use
24 of any means or instrumentality of interstate commerce, or of the mails, or of any facility of
25 any national securities exchange:

- 26 A. employing any device, scheme, or artifice to defraud;

- B. making any untrue statement of a material fact or omitting 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. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in connection with the purchase or sale of any security, in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, upon motion by the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the amount(s) of the disgorgement and/or civil penalties. If disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement, prejudgment interest and/or civil penalties, and at any hearing held on such a motion, Defendant may defend against the motion except that: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the

1 Commission's motion for disgorgement, prejudgment interest and/or civil penalties, the
2 parties may take discovery, including discovery from appropriate non-parties.

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4 IV.
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6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
7 incorporated herein with the same force and effect as if fully set forth herein, and that
8 Defendant shall comply with all of the undertakings and agreements set forth therein.
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11 V.
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13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall
14 retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.
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17 VI.
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19 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of
20 Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further
21 notice.
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23 Date: September 3, 2009
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25 
26 LAWRENCE K. KARLTON
27 SENIOR JUDGE
28 UNITED STATES DISTRICT COURT

29 Approved as to form:
30

31 /s/Edward Gelfand
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