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9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 vs.

16 PETER D. NUNAN,

17 Defendant.

Case No. 16-CV-02373-LHK

**~~(PROPOSED)~~ FINAL JUDGMENT AS TO
 DEFENDANT PETER D. NUNAN**

18 The Securities and Exchange Commission having filed a Complaint and Defendant Peter D.
 19 Nunan having entered a general appearance; consented to the Court’s jurisdiction over Defendant
 20 and the subject matter of this action; consented to entry of this Final Judgment without admitting or
 21 denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided
 22 herein in paragraph IV); waived findings of fact and conclusions of law; and waived any right to
 23 appeal from this Final Judgment:

24 **I.**

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently
 26 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities
 27 Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated
 28 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

1 purchase or sale of any security:

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

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

13 **II.**

14 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
15 permanently restrained and enjoined from violating Section 14(e) of the Exchange Act of 1934 [15
16 U.S.C. § 78(n)(e)], and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection
17 with any tender offer or request or invitation for tenders, from engaging in any fraudulent,
18 deceptive, or manipulative act or practice, by:

- 19 (a) purchasing or selling or causing to be purchased or sold the securities sought or to be
20 sought in such tender offer, securities convertible into or exchangeable for any such
21 securities or any option or right to obtain or dispose of any of the foregoing securities
22 while in possession of material information relating to such tender offer that
23 Defendant knows or has reason to know is nonpublic and knows or has reason to
24 know has been acquired directly or indirectly from the offering person; the issuer of
25 the securities sought or to be sought by such tender offer; or any officer, director,
26 partner, employee, or other person acting on behalf of the offering person or such
27 issuer, unless within a reasonable time prior to any such purchase or sale such
28 information and its source are publicly disclosed by press release or otherwise; or

1 (b) communicating material, nonpublic information relating to a tender offer, which
2 Defendant knows or has reason to know is nonpublic and knows or has reason to
3 know has been acquired directly or indirectly from the offering person; the issuer of
4 the securities sought or to be sought by such tender offer; or any officer, director,
5 partner, employee, advisor, or other person acting on behalf of the offering person of
6 such issuer, to any person under circumstances in which it is reasonably foreseeable
7 that such communication is likely to result in the purchase or sale of securities in the
8 manner described in subparagraph (a) above, except that this paragraph shall not
9 apply to a communication made in good faith:

10 (i) to the officers, directors, partners, or employees of the offering person, to its
11 advisors or to other persons, involved in the planning, financing, preparation,
12 or execution of such tender offer;

13 (ii) to the issuer whose securities are sought or to be sought by such tender offer,
14 to its officers, directors, partners, employees, or advisors or to other persons
15 involved in the planning, financing, preparation, or execution of the activities
16 of the issuer with respect to such tender offer; or

17 (iii) to any person pursuant to a requirement of any statute or rule or regulation
18 promulgated thereunder.

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

24 III.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for
26 disgorgement of \$254,858, representing profits gained as a result of the conduct alleged in the
27 Complaint, together with prejudgment interest thereon in the amount of \$24,587, and a civil penalty
28 in the amount of \$254,858, pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

1 Defendant shall satisfy this obligation by paying \$534,303 to the Securities and Exchange
2 Commission within 14 days after entry of this Final Judgment.

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

6 Defendant may also pay by certified check, bank cashier's check, or United States postal money
7 order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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

12 and shall be accompanied by a letter identifying the case title, civil action number, and name of this
13 Court; Peter D. Nunan as a defendant in this action; and specifying that payment is made pursuant
14 to this Final Judgment.

15 Defendant shall simultaneously transmit photocopies of evidence of payment and case
16 identifying information to the Commission's counsel in this action. By making this payment,
17 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of
18 the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to
19 this Final Judgment to the United States Treasury.

20 The Commission may enforce the Court's judgment for disgorgement and prejudgment
21 interest by moving for civil contempt (and/or through other collection procedures authorized by
22 law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post
23 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

24 IV.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of
26 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the
27 allegations in the complaint are true and admitted by Defendant, and further, any debt for
28 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

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

4 V.

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

7 The Clerk shall close the case file.

8 Dated: May 3, 2016, _____

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11 _____

12 UNITED STATES DISTRICT JUDGE
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