

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

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

JOHN CLEMENT and EDGEFUND
CAPITAL, LLC,

Defendants.

CASE NO. 11cv1034-LAB (WVG)

**ORDER GRANTING JOINT
MOTION FOR FINAL JUDGMENT**

About six years ago, John Clement pled guilty to wire fraud and was ordered to pay around \$5 million to compensate eleven victims. The Court granted a permanent injunction freezing the funds in 12 of his accounts, entered judgment against Clement, but retained jurisdiction to enforce the judgment and to determine any additional relief.¹

Last fall, the Court ordered all frozen money in the bank accounts of Clement, Cherly Kilmer, and Scott Clement turned over to the Clerk and added to the restitution fund. The parties filed a joint motion for entry of final judgment. The motion is granted.²

In short, the Court permanently restrains Clement, as well as his agents and all persons acting in concert with him, from violating 15 U.S.C. §§ 77q(a), 78j(b), 80b-6(1),(2),(4) and 17 C.F.R. §§ 240.10b-5, 275.206(4)-8. But since the parties have agreed to specific language in a joint proposed order, the Court adopts the parties' more capacious order below.

¹ Dkt. 29.

² Dkt. 34. This order resolves the ex parte motion for clarification (Dkt. 37) since the Court previously retained jurisdiction to enforce this judgment, and, the motion's unopposed. Standing Order § 8.

* * *

1
2 Plaintiff Securities and Exchange Commission (“SEC”) having filed a Complaint and
3 Defendant John Clement (“Clement”) having entered a general appearance; consented to
4 the Court’s jurisdiction over Defendant Clement and the subject matter of this action;
5 consented to entry of a Judgment imposing a permanent injunction without admitting or
6 denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact
7 and conclusions of law; and waived any right to appeal from that Judgment; the Court having
8 entered the Judgment on September 16, 2011 (Dkt. No. 29); Defendant Clement having pled
9 guilty in the criminal action United States of America v. John Clement, CR-04198 (S.D. Cal.),
10 arising from the same conduct, and been sentenced by Amended Order on May 30, 2012,
11 to pay restitution of \$4,941,550.00, among other relief; and Plaintiff SEC having determined
12 not to seek further monetary relief in this action, in light of the restitution order in the criminal
13 action and the turnover of funds frozen in this action to the restitution fund in the criminal
14 action:

15 I.

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Clement
17 and Defendant’s agents, servants, employees, attorneys, and all persons in active concert
18 or participation with them who receive actual notice of this Final Judgment by personal
19 service or otherwise are permanently restrained and enjoined from violating Section 17(a)
20 of the Securities Act of 1933, 15 U.S.C. § 77q(a), in the offer or sale of any security by the
21 use of any means or instruments of transportation or communication in interstate commerce
22 or by use of the mails, directly or indirectly: (a) to employ any device, scheme, or artifice to
23 defraud; (b) to obtain money or property by means of any untrue statement of a material fact
24 or any omission of a material fact necessary in order to make the statements made, in light
25 of the circumstances under which they were made, not misleading; or (c) to engage in any
26 transaction, practice, or course of business which operates or would operate as a fraud or
27 deceit upon the purchaser.

28

1 II.

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Clement
3 and Defendant's agents, servants, employees, attorneys, and all persons in active concert
4 or participation with them who receive actual notice of this Final Judgment by personal
5 service or otherwise are permanently restrained and enjoined from violating, directly or
6 indirectly, Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule
7 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or
8 instrumentality of interstate commerce, or of the mails, or of any facility of any national
9 securities exchange, in connection with the purchase or sale of any security: (a) to employ
10 any device, scheme, or artifice to defraud; (b) to make any untrue statement of a material
11 fact or to omit to state a material fact necessary in order to make the statements made, in
12 the light of the circumstances under which they were made, not misleading; or (c) to engage
13 in any act, practice, or course of business which operates or would operate as a fraud or
14 deceit upon any person.

15 III.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Clement
17 and Defendant's agents, servants, employees, attorneys, and all persons in active concert
18 or participation with them who receive actual notice of this Final Judgment by personal
19 service or otherwise are permanently restrained and enjoined from violating, directly or
20 indirectly, while acting as an investment adviser, Sections 206(1), 206(2) and 206(4) of the
21 Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-6(1), 80b-6(2) & 80b-6(4), and Rule
22 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8, by using the mails or any means or
23 instrumentality of interstate commerce: (a) to employ any device, scheme, or artifice to
24 defraud any client or prospective client; (b) to engage in any transaction, practice, or course
25 of business which operates as a fraud or deceit upon any client or prospective client; or (c)
26 while acting as an investment adviser to a pooled investment vehicle: (1) to engage in any
27 act, practice or course of business which is fraudulent, deceptive, or manipulative by making
28 any untrue statement of a material fact or omitting to state a material fact necessary to make

1 the statements made, in the light of the circumstances under which they are made, not
2 misleading, to any investor or prospective investor in the pooled investment vehicle; or (2)
3 to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive,
4 or manipulative with respect to any investor or prospective investor in the pooled investment
5 vehicle.

6 IV.

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

9 V.

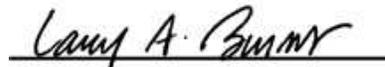
10 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil
11 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further
12 notice.

13 * * *

14 The parties' joint motion to enter final judgment is **GRANTED**. (Dkt. 35.)

15 **IT IS SO ORDERED.**

16
17 DATED: April 13, 2017

18 

19 **HONORABLE LARRY ALAN Burns**
20 United States District Judge
21
22
23
24
25
26
27
28