UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,))) Case No: 1:18-cv-02637
Plaintiff,) Judge: Ronald A. Guzman
v.)
ANDREW J. KANDALEPAS,)
Defendant.)))

MOTION FOR JUDGMENT SETTING AMOUNT OF DISGORGEMENT AND CIVIL PENALTIES AGAINST DEFENDANT

Plaintiff U. S. Securities and Exchange Commission ("SEC" or "Plaintiff"), pursuant to the Consent filed on September 18, 2018 (Dkt. 27-2) and the Judgment as to Defendant Andrew J. Kandalepas" or "Defendant") entered on September 25, 2018 (Dkt. 31), respectfully moves this Court for final judgment setting the amount of disgorgement, prejudgment interest thereon, and civil penalties to be paid by Kandalepas.

In the Consent (Dkt. 27-2):

Defendant agree[d] that the Court **shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty** 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)]. Defendant further agree[d] that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission, and that prejudgment interest shall be calculated from September 30, 2013, 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). Defendant further agree[d] that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (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 this Consent or the 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.

(Dkt. 27-2 at \P 5 (emphasis added)):

Based on the allegations of fraud contained in the Complaint (Dkt. 1), which Kandalepas agreed to accept as true for the purposes of this motion, and for the reasons stated in the SEC's accompanying memorandum and the Declaration of Craig L. McShane, the Court should:

- 1. Order Kandalepas to pay \$593,363.25 in disgorgement, representing the ill-gotten proceeds of his fraud, plus prejudgment interest thereon of \$113,554.63;
- 2. Order Kandalepas to pay civil penalties; and
- 3. Enter final judgment against Kandalepas.

April 12, 2019

Respectfully submitted,

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

By: /s/ Doressia L. Hutton
Doressia L. Hutton (HuttonD@sec.gov)
John E. Birkenheier (BirkenheierJ@sec.gov)
Michelle Muñoz Durk (MunozdurkM@sec.gov)
Kevin A. Wisniewski (WisniewskiK@sec.gov)
175 West Jackson Boulevard, Suite 1450
Chicago, IL 60604-2615
(312) 353-7390; (312) 353-7398 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2019, I served **MOTION FOR JUDGMENT SETTING AMOUNT OF DISGORGEMENT AND CIVIL PENALTIES AGAINST DEFENDANT** on all counsel of record through the Court's ECF filing system and on Defendant Andrew J. Kandalepas via email at and via overnight delivery at 1527 Lexington Court, Schaumburg, IL 60163.

By: <u>/s/ Doressia L. Hutton</u> Doressia L. Hutton