

THE HONORABLE RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

KIRK SPERRY, and
SPERRY AND SONS CAPITAL INVESTMENTS,
LLC,

Defendants.

Civil Action No. 2:20-cv-01337-RSM

**CORRECTED FINAL JUDGMENT
AS TO DEFENDANTS KIRK
SPERRY AND SPERRY AND
SONS CAPITAL INVESTMENTS,
LLC**

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2 This matter came before the Court on Plaintiff Securities and Exchange Commission's
3 (the "Commission" or the "SEC") Motion for Final Judgment as to Defendants Kirk Sperry
4 and Sperry and Sons Capital Investments, LLC ("Sperry and Sons") (collectively,
5 "Defendants"). Upon consideration of the Motion for Final Judgment, and in accordance with
6 the Consent Judgments previously agreed to by the parties, the Commission's Motion for
7 Final Judgment is hereby GRANTED.

8 I.

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Sperry
10 and Sons is liable for disgorgement of \$125,000, representing net profits gained as a result of
11 the conduct alleged in the Complaint, together with prejudgment interest thereon in the
12 amount of \$34,480.25, and a civil penalty in the amount of \$125,000 pursuant to Section
13 20(d) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(d)] and Section 21(d)
14 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. Defendant
15 Sperry and Sons shall satisfy this obligation by paying \$284,480.25 to the Securities and
16 Exchange Commission within thirty (30) days after the entry of this Final Judgment.

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

23 Enterprise Services Center
24 Accounts Receivable Branch
25 6500 South MacArthur Boulevard
26 Oklahoma City, OK 73169

27 and shall be accompanied by a letter identifying the case title, civil action number, and name
28 of this Court; Sperry and Sons Capital Investments, LLC as a defendant in this action; and
specifying that payment is made pursuant to this Final Judgment.

Defendant Sperry and Sons shall simultaneously transmit photocopies of evidence of

1 payment and case identifying information to the Commission's counsel in this action. By
2 making this payment, Defendant Sperry and Sons relinquishes all legal and equitable right,
3 title, and interest in such funds and no part of the funds shall be returned to Defendant Sperry
4 and Sons.

5 The Commission may enforce the Court's judgment for disgorgement and
6 prejudgment interest by using all collection procedures authorized by law, including, but not
7 limited to, moving for civil contempt at any time after 30 days following entry of this Final
8 Judgment.

9 The Commission may enforce the Court's judgment for penalties by the use of all
10 collection procedures authorized by law, including the Federal Debt Collection Procedures
11 Act, 28 U.S.C. § 3001 et seq., and moving for civil contempt for the violation of any Court
12 orders issued in this action. Defendant Sperry and Sons shall pay post judgment interest on
13 any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. §
14 1961. The Commission shall hold the funds, together with any interest and income earned
15 thereon (collectively, the "Fund"), pending further order of the Court.

16 The Commission may propose a plan to distribute the Fund subject to the Court's
17 approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair
18 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain
19 jurisdiction over the administration of any distribution of the Fund and the Fund may only be
20 disbursed pursuant to an Order of the Court. Regardless of whether any such Fair Fund
21 distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final
22 Judgment shall be treated as penalties paid to the government for all purposes, including all
23 tax purposes.

24 II.

25 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
26 Defendant Kirk Sperry is liable for a civil penalty in the amount of \$125,000 pursuant to
27 Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange
28 Act [15 U.S.C. § 78u(d)]. Defendant Kirk Sperry shall satisfy this obligation by paying

1 \$125,000 to the Securities and Exchange Commission within 30 days after entry of this Final
2 Judgment.

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

9 Enterprise Services Center
10 Accounts Receivable Branch
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
13 of this Court; Kirk Sperry as a defendant in this action; and specifying that payment is made
14 pursuant to this Final Judgment.

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

19 The Commission may enforce the Court's judgment for penalties by the use of all
20 collection procedures authorized by law, including the Federal Debt Collection Procedures
21 Act, 28 U.S.C. § 3001 et seq., and moving for civil contempt for the violation of any Court
22 orders issued in this action. Defendant Kirk Sperry shall pay post judgment interest on any
23 amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.
24 The Commission shall hold the funds, together with any interest and income earned thereon,
25 pending further order of the Court.

26 The Commission may propose a plan to distribute the funds collected from Kirk
27 Sperry subject to the Court's approval. Such a plan may provide that the funds collected shall
28 be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley

1 Act of 2002. The Court shall retain jurisdiction over the administration of any such
2 distribution, which may only be disbursed pursuant to an Order of the Court. Regardless of
3 whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties
4 pursuant to this Final Judgment shall be treated as penalties paid to the government for all
5 purposes, including all tax purposes.

6 III.

7 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, in
8 accordance with the prior Consent Judgments entered in this case, Defendants are
9 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the
10 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R.
11 § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails,
12 or of any facility of any national securities exchange, in connection with the purchase or sale
13 of any security:

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

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

25 IV.

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, in
27 accordance with the prior Consent Judgments entered in this case, Defendants are
28 permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15

1 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of
2 transportation or communication in interstate commerce or by use of the mails, directly or
3 indirectly:

- 4 (a) to employ any device, scheme, or artifice to defraud;
- 5 (b) to obtain money or property by means of any untrue statement of a material
6 fact or any omission of a material fact necessary in order to make the
7 statements made, in light of the circumstances under which they were made,
8 not misleading; or
- 9 (c) to engage in any transaction, practice, or course of business which operates or
10 would operate as a fraud or deceit upon the purchaser.

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

16 V.

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

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21 DATED this 1st day of December, 2021.

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25 RICARDO S. MARTINEZ
26 CHIEF UNITED STATES DISTRICT JUDGE
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