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 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

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 14 SECURITIES AND EXCHANGE COMMISSION,  
 15 Plaintiff,  
 16 v.  
 17 WALTER NG, KELLY NG, BRUCE HORWITZ,  
 and THE MORTGAGE FUND, LLC  
 18 Defendants.

Case No. C-13-CV-00895 SC

**FINAL JUDGMENT AS TO DEFENDANT  
KELLY NG**

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 20 The Securities and Exchange Commission having filed a Complaint and Defendant Kelly Ng  
 21 (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over  
 22 Defendant and the subject matter of this action; consented to entry of this Final Judgment without  
 23 admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of  
 24 fact and conclusions of law; and waived any right to appeal from this Final Judgment:

25 I.

26 IT IS HEERBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant’s  
 27 agents, servants, employees, attorneys, and all persons in active concert or participation with them  
 28 who receive actual notice of this Final Judgment by personal service or otherwise are permanently

1 restrained and enjoined from violating Sections 206(1) and 206(2) of the Investment Advisors Act of  
2 1940 (the “Advisors Act”) [15 U.S.C. §§ 80b-6(1) & (2)], by using the mails or any means or  
3 instrumentality of interstate commerce, directly or indirectly:

- 4 (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or  
5 (b) to engage in any transaction, practice, or course of business which operates as a fraud or  
6 deceit upon any client or prospective client.

7 II.

8 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
9 Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation  
10 with them who receive actual notice of this Final Judgment by personal service or otherwise are  
11 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the  
12 Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5  
13 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate  
14 commerce, or of the mails, or of any facility of any national securities exchange, in connection with  
15 the purchase or sale of any security:

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

22 III.

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and  
24 Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation  
25 with them who receive actual notice of this Final Judgment by personal service or otherwise are  
26 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the  
27 “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or  
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1 instruments of transportation or communication in interstate commerce or by use of the mails,  
2 directly or indirectly:

3 (a) to employ any device, scheme, or artifice to defraud;

4 (b) to obtain money or property by means of any untrue statement of a material fact or any  
5 omission of a material fact necessary in order to make the statements made, in light of the  
6 circumstances under which they were made, not misleading; or

7 (c) to engage in any transaction, practice, or course of business which operates or would  
8 operate as a fraud or deceit upon the purchaser.

9 IV.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
11 liable for disgorgement of \$804,600.00, representing profits gained as a result of the conduct alleged  
12 in the Complaint, together with prejudgment interest thereon in the amount of \$4,384.00, and a civil  
13 penalty in the amount of \$150,000.00 pursuant to Section 209 of the Advisers Act [15 U.S.C. § 80b-  
14 9], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 20(d)(1) of the  
15 Securities Act [15 U.S.C. § 77t(d)(1)]. Defendant shall satisfy this obligation by paying \$958,984.00  
16 to the Securities and Exchange Commission by Wednesday, December 3, 2014.

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

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

25 and shall be accompanied by a letter identifying the case title, civil action number, and name of this  
26 Court; Kelly Ng as a defendant in this action; and specifying that payment is made pursuant to this  
27 Final Judgment.

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

5 Defendant may receive a dollar-for-dollar credit against his disgorgement obligation of  
6 \$808,984 to the extent that he provides satisfactory proof to the Commission that he has made  
7 payment to the Liquidating Trustee upon the \$370,000 judgment entered against Kelly Ng on August  
8 28, 2013, in the Chapter 11 bankruptcy proceeding entitled *In the Matter of Mortgage Fund '08 LLC,*  
9 *Susan L. Uecker v. Kelly William Ng*, Case No. 11-49803-RLE-11 (Adv. Proc. No. 12-04099), in the  
10 United State Bankruptcy Court for the Northern District of California (the "Kelly Ng Bankruptcy  
11 Judgment"). After paying some or all of the Kelly Ng Bankruptcy Judgment, Kelly Ng shall provide  
12 the Commission's counsel of record with a written receipt of payment from the Liquidating Trustee  
13 indicating the date and amount of payment.

14 The Commission may enforce the Court's judgment for disgorgement and prejudgment  
15 interest by moving for civil contempt (and/or through other collection procedures authorized by law)  
16 at any time after December 3, 2014. Defendant shall pay post judgment interest on any delinquent  
17 amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any  
18 interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

19 The Commission may propose a plan to distribute the Fund subject to the Court's approval.  
20 Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of  
21 Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the  
22 administration of any distribution of the Fund. If the Commission staff determines that the Fund will  
23 not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the  
24 United States Treasury.

25 Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as  
26 civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all  
27 purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant  
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1 shall not, after offset or reduction of any award of compensatory damages in any Related Investor  
2 Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor  
3 shall he further benefit by, offset or reduction of such compensatory damages award by the amount of  
4 any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in  
5 any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry  
6 of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay  
7 the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission  
8 directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to  
9 change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a  
10 "Related Investor Action" means a private damages action brought against Defendant by or on behalf  
11 of one or more investors based on substantially the same facts as alleged in the Complaint in this  
12 action.

13 V.

14 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of  
15 Defendant Kelly Ng is incorporated herein with the same force and effect as if fully set forth herein,  
16 and that Defendant shall comply with all of the undertakings and agreements set forth therein.

17 VI.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for  
19 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §  
20 523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for  
21 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final  
22 Judgment or any other judgment, order, consent order, decree or settlement agreement entered in  
23 connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws  
24 or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the  
25 Bankruptcy Code, 11 U.S.C. § 523(a)(19).  
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VII.

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

IT IS SO ORDERED.

Dated: 08/01/2014



SAMUEL CONTI  
UNITED STATES DISTRICT JUDGE