

JS-6

NOTE CHANGES MADE BY THE COURT

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Eastern Division**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

ANTHONY TODD JOHSON, et al.,

Defendants.

Case No. 5:20-cv-01493-MCS-SHK

~~AMENDED [PROPOSED]~~ FINAL
JUDGMENT AS TO DEFENDANT
MARK W. HECKELE

For the reasons set forth in the Court’s January 26, 2022 order granting in part and denying in part summary judgment (ECF No. 83) and the Court’s findings of fact and conclusions of law:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Mark W. Heckeles (“Heckeles”) violated and is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of

1 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated
2 thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of
3 interstate commerce, or of the mails, or of any facility of any national securities
4 exchange, in connection with the purchase or sale of any security:

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

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

17 II.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
19 Heckeles is permanently restrained and enjoined from violating Section 17(a) of the
20 Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale
21 of any security by the use of any means or instruments of transportation or
22 communication in interstate commerce or by use of the mails, directly or indirectly:

- 23 (a) to employ any device, scheme, or artifice to defraud;
- 24 (b) to obtain money or property by means of any untrue statement of a
25 material fact or any omission of a material fact necessary in order to
26 make the statements made, in light of the circumstances under which
27 they were made, not misleading; or
- 28 (c) to engage in any transaction, practice, or course of business which

1 operates or would operate as a fraud or deceit upon the purchaser.

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

8 III.

9 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
10 Heckeles violated and is permanently restrained and enjoined from violating Section 5
11 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any
12 applicable exemption:

- 13 (a) Unless a registration statement is in effect as to a security, making use of
14 any means or instruments of transportation or communication in
15 interstate commerce or of the mails to sell such security through the use
16 or medium of any prospectus or otherwise;
- 17 (b) Unless a registration statement is in effect as to a security, carrying or
18 causing to be carried through the mails or in interstate commerce, by any
19 means or instruments of transportation, any such security for the purpose
20 of sale or for delivery after sale; or
- 21 (c) Making use of any means or instruments of transportation or
22 communication in interstate commerce or of the mails to offer to sell or
23 offer to buy through the use or medium of any prospectus or otherwise
24 any security, unless a registration statement has been filed with the
25 Commission as to such security, or while the registration statement is the
26 subject of a refusal order or stop order or (prior to the effective date of
27 the registration statement) any public proceeding or examination under
28 Section 8 of the Securities Act [15 U.S.C. § 77h].

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

7 IV.

8 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
9 Heckeles violated and is permanently restrained and enjoined from violating, directly
10 or indirectly, Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), which makes it
11 unlawful for any broker or dealer which is either a person other than a natural person
12 or a natural person, to make use of the mails or any means or instrumentality of
13 interstate commerce to effect any transactions in, or to induce or attempt to induce the
14 purchase or sale of, any security (other than an exempted security or commercial
15 paper, bankers' acceptances, or commercial bills) unless such broker or dealer is
16 registered in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

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

23 V.

24 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
25 Heckeles shall pay disgorgement in the amount of \$268,237.50 together with
26 prejudgment interest in the amount of \$42,595.22, for a total of \$310,832.72, all of
27 which represents net profits gained as a result of the conduct alleged in the
28 Complaint, which the Court finds is for the benefit of investors. The Court further

1 imposes a civil penalty against Heckeke in the amount of ~~\$195,047.00~~ **\$207,183.00**
2 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)]. Heckeke shall satisfy these obligations
4 by paying for aforementioned sums to the Securities and Exchange Commission with
5 30 days after entry of this Final Judgment.

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

12 Enterprise Services Center
13 Accounts Receivable Branch
14 6500 South MacArthur Boulevard
15 Oklahoma City, OK 73169

16 and shall be accompanied by a letter identifying the case title, civil action number,
17 and name of this Court; Mark W. Heckeke as a defendant in this action; and
18 specifying that payment is made pursuant to this Final Judgment.

19 Heckeke shall simultaneously transmit photocopies of evidence of payment and
20 case identifying information to the Commission's counsel in this action. By making
21 this payment, Heckeke relinquish all legal and equitable right, title, and interest in
22 such funds, and no part of the funds shall be returned to Heckeke.

23 The Commission may enforce the Court's judgment for disgorgement and
24 prejudgment interest by using all collection procedures authorized by law, including,
25 but not limited to, moving for civil contempt at any time after 30 days following entry
26 of this Final Judgment. The Commission may enforce the Court's judgment for
27 penalties by the use of all collection procedures authorized by law, including the
28 Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for

1 civil contempt for the violation of any Court orders issued in this action.

2 Heckeles shall pay post judgment interest on any amounts due after 30 days of
3 the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

4 The Commission shall hold the funds (collectively, the “Fund”) until further
5 order of this Court. The SEC ~~may~~ **shall** propose a plan to distribute the Fund subject
6 to the Court’s approval, and the Court shall retain jurisdiction over the administration
7 of any distribution of the Fund.

8 Such a plan may provide that the Fund shall be distributed pursuant to the Fair
9 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court
10 shall retain jurisdiction over the administration of any distribution of the Fund and the
11 Fund may only be disbursed pursuant to an Order of the Court.

12 Regardless of whether any such Fair Fund distribution is made, amounts
13 ordered to be paid as civil penalties pursuant to this Judgment shall be treated as
14 penalties paid to the government for all purposes, including all tax purposes. To
15 preserve the deterrent effect of the civil penalty, Heckeles shall not, after offset or
16 reduction of any award of compensatory damages in any Related Investor Action
17 based on Defendant’s payment of disgorgement in this action, argue that he is entitled
18 to, nor shall he further benefit by, offset or reduction of such compensatory damages
19 award by the amount of any part of Defendant’s payment of a civil penalty in this
20 action (“Penalty Offset”). If a court in any Related Investor Action grants such a
21 Penalty Offset, Heckeles, within 30 days after entry of a final order granting the
22 Penalty Offset, notify the Commission’s counsel in this action and pay the amount of
23 the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission
24 directs. Such a payment shall not be deemed an additional civil penalty and shall not
25 be deemed to change the amount of the civil penalty imposed in this Judgment. For
26 purposes of this paragraph, a “Related Investor Action” means a private damages
27 action brought against Heckeles by or on behalf of one or more investors based on
28 substantially the same facts as alleged in the Complaint in this action.

1 VI.

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
3 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
4 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Heckeles,
5 and further, any debt for disgorgement, prejudgment interest, civil penalty or other
6 amounts due by Heckeles under this Judgment or any other judgment, order, consent
7 order, decree or settlement agreement entered in connection with this proceeding, is a
8 debt for the violation by Heckeles of the federal securities laws or any regulation or
9 order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy
10 Code, 11 U.S.C. §523(a)(19).

11 VII.

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

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16 Dated: June 29, 2022



17
18 MARK C. SCARSI
19 UNITED STATES DISTRICT JUDGE
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