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

SECURITIES AND EXCHANGE
COMMISSION,

Case No. 12-cv-00646-L-KSC

Plaintiff,

v.

SW ARGYLL INVESTMENTS, LLC
(d/b/a ARGYLL INVESTMENTS,
LLC),
JAMES T. MICELI,
DOUGLAS A. MCCLAIN, JR.,
AMERIFUND CAPITAL FINANCE,
LLC, and JEFFREY SPANIER,

Defendants.

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FINAL JUDGMENT AS TO
DEFENDANT DOUGLAS A. McCLAIN, JR.

The Securities and Exchange Commission having filed a Complaint and Defendant Douglas A. McClain, Jr. (“McClain”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

1
2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
3 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b)
4 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and
5 Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or
6 instrumentality of interstate commerce, or of the mails, or of any facility of any national
7 securities exchange, in connection with the purchase or sale of any security:
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- 10 (a) to employ any device, scheme, or artifice to defraud;
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12 (b) to make any untrue statement of a material fact or to omit to state a material
13 fact necessary in order to make the statements made, in the light of the
14 circumstances under which they were made, not misleading; or
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16 (c) to engage in any act, practice, or course of business which operates or would
17 operate as a fraud or deceit upon any person.
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19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
20 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the
21 following who receive actual notice of this Final Judgment by personal service or
22 otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b)
23 other persons in active concert or participation with Defendant or with anyone described
24 in (a).
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27 II.
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1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
2 Defendant is permanently restrained and enjoined from violating Section 5 of the
3 Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77e] by, directly or indirectly,
4 in the absence of any applicable exemption:
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- 6 (a) Unless a registration statement is in effect as to a security, making use of any
7 means or instruments of transportation or communication in interstate
8 commerce or of the mails to sell such security through the use or medium of
9 any prospectus or otherwise;
10
11 (b) Unless a registration statement is in effect as to a security, carrying or
12 causing to be carried through the mails or in interstate commerce, by any
13 means or instruments of transportation, any such security for the purpose of
14 sale or for delivery after sale; or
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16 (c) Making use of any means or instruments of transportation or communication
17 in interstate commerce or of the mails to offer to sell or offer to buy through
18 the use or medium of any prospectus or otherwise any security, unless a
19 registration statement has been filed with the Commission as to such
20 security, or while the registration statement is the subject of a refusal order
21 or stop order or (prior to the effective date of the registration statement) any
22 public proceeding or examination under Section 8 of the Securities Act [15
23 U.S.C. § 77h].
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1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
2 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the
3 following who receive actual notice of this Final Judgment by personal service or
4 otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b)
5 other persons in active concert or participation with Defendant or with anyone described
6 in (a).
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9 III.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
11 Defendant is permanently restrained and enjoined from violating Section 15(a) of the
12 Exchange Act [15 U.S.C. § 78o(a)] by, without being registered with the Commission as
13 a broker or dealer or an associated person of a broker-dealer, acting as a broker or dealer
14 and making use of the mails or any other means or instrumentality of interstate commerce
15 to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any
16 security.
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19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
20 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the
21 following who receive actual notice of this Final Judgment by personal service or
22 otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b)
23 other persons in active concert or participation with Defendant or with anyone described
24 in (a).
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27 IV.
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1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
2 Defendant McClain is liable for disgorgement of ill-gotten gains and prejudgment interest
3 thereon of \$9,471,492.45. This amount shall be deemed satisfied by the judgment
4 entered in *U.S. v. Miceli*, which orders Defendant to pay restitution of \$81,731,879.98.
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6 V.
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8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of
9 Defendant McClain is incorporated herein with the same force and effect as if fully set
10 forth herein, and that Defendant shall comply with all of the undertakings and agreements
11 set forth therein.
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13 VI.
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15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
16 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11
17 U.S.C. §523, the allegations in the Complaint are true and admitted by Defendant
18 McClain, and further, any debt for disgorgement, prejudgment interest, civil penalty or
19 other amounts due by Defendant under this Final Judgment or any other judgment, order,
20 consent order, decree or settlement agreement entered in connection with this proceeding,
21 is a debt for the violation by Defendant of the federal securities laws or any regulation or
22 order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code,
23 11 U.S.C. §523(a)(19).
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VII.

IT IS 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.

VIII.

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

Dated: April 26, 2018


Hon. M. James Lorenz
United States District Judge