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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 SECURITIES AND EXCHANGE COMMISSION,

17 Plaintiff,

18 v.

19 JOHN M. CINDERREY,

20 Defendant.

Case No. CV-12-01519 JSW

~~PROPOSED~~

FINAL JUDGMENT AS TO
DEFENDANT JOHN M. CINDERREY

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I.

The Securities and Exchange Commission having filed a Complaint and Defendant John M. Cinderey 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 without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant’s agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly, violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to implement a system of internal accounting controls.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant’s agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly, violating Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1] by falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]; and from directly or indirectly violating Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2] by making or causing to be made a materially false or misleading statement to an accountant, or omitting any material fact necessary in order to make statements made to an accountant not misleading, in connection with any audit, review or examination of the financial statements of an issuer.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant and Defendant’s agents, servants, employees, attorneys-in-fact, and all persons in active concert or

1 participation with any of them, who receive actual notice of this Final Judgment, by personal
2 service or otherwise, and each of them, are permanently enjoined and restrained from aiding and
3 abetting any violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]
4 by knowingly providing substantial assistance to any issuer which has a class of securities
5 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the
6 Exchange Act [15 U.S.C. § 78o] in failing to make or keep books, records or accounts, which, in
7 reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of
8 the issuer.

9 V.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court is not
11 ordering Defendant to pay a civil penalty. The determination not to impose a civil penalty is
12 based in part on the penalty of \$40,000 already paid by Defendant in a civil enforcement
13 proceeding brought by the Federal Deposit Insurance Corporation (“FDIC”), captioned “Order of
14 Prohibition from Further Participation and Order to Pay,” File Nos. FDIC-11-294e, FDIC-11-
15 295k (September 22, 2011).

16 VI.

17 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Court
18 is not ordering Defendant to pay a civil penalty based in part on Defendant’s cooperation in a
19 Commission investigation and related enforcement action. If at any time following the entry of
20 the Final Judgment the Commission obtains information indicating that Defendant knowingly
21 provided materially false or misleading information or materials to the Commission or in a
22 related proceeding, the Commission may, at its sole discretion and without prior notice to the
23 Defendant, petition the Court for an order requiring Defendant to pay a civil penalty. In
24 connection with any such petition and at any hearing held on such a motion: (a) Defendant will
25 be precluded from arguing that he did not violate the federal securities laws as alleged in the
26 Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any
27 related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such
28 motion, shall be accepted as and deemed true by the Court; and (d) the Court may determine the

1 issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition
2 or investigative testimony, and documentary evidence without regard to the standards for
3 summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these
4 circumstances, the parties may take discovery, including discovery from appropriate non-parties.

5 VII.

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

8 VIII.

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

11 Dated: May 1, 2012

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14 UNITED STATES DISTRICT JUDGE