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February 3, 2025

VIA HAND DELIVERY AND EMAIL

Ms. Diana Chandler
Zoning Board of Adjustment Secretary
Township of West Orange
66 Main Street
West Orange, New Jersey 07052

Re: Zinnia Health LLC –Board of Adjustment Application for 33 Mount Pleasant Avenue, Block 88, Lot 26, Township of West Orange, NJ

Dear Ms. Chandler:

We represent the Committee of Managers of Llewellyn Park (the “COM”). We are writing you to provide a number of documents the COM would like you to include as part of the record on the above-referenced application which the COM referred to previously and/or intends to further address at the continued hearing on February 13, 2025.

Initially, as agreed at the prior January 16, 2025 hearing, we have enclosed herein at “Exhibit 1” a summary report of planning testimony that the COM intends to have its planner, Michael J. Pessolano, P.P. testify to at the continued hearing.

We have also enclosed herein at “Exhibit 2” certain legal Complaints that were referred to at the prior hearing involving Zinnia Health LLC (the “Applicant”). We believe these legal Complaints provide context to the type of operation the Applicant runs and contradicts the Applicant’s testimony regarding the benefits of this proposed center operating in the West Orange community.

The first Complaint entitled *Linda Rodgers-Cromer, LCADC v. Zinnia Health LLC, Daniel Cincotta, Deena Scher*, docket number ESX-L-004622-23 (the “Whistleblower Complaint”), was a Complaint filed by Ms. Linda Rodgers-Cromer that contains a number of deeply troubling allegations related the Applicant’s treatment facility located at 206 Bergen Avenue, Kearny, New

Jersey 07032 (the “Kearny Facility”). The Whistleblower Complaint alleges that Ms. Rogers, a 63-year old African American woman and licensed Marriage and Family Therapist/Licensed Clinical Alcohol & Drug Counselor, was illegally terminated from her position as an Outpatient Licensed Clinician after reporting that an operational manager and a “gym buddy” of the Applicant’s management team was engaged in a romantic/sexual relationship with one of Ms. Rogers’ clients at the Kearny Facility.

The second legal complaint attached at “Exhibit 2” is a lawsuit filed by Sysco Metro New York LLC entitled *Sysco Metro New York, LLC v. Zinnia Health, LLC, et. al*, docket number BER-L-000272-24 (the “Non-Payment Complaint”). The Non-Payment Complaint alleges that the Kearny Facility failed to pay the Plaintiff \$63,714.07 under a contract with Sysco Metro New York, LLC, presumably for food services.

We have also enclosed herein at “Exhibit 3” a November 29, 2016 legal complaint and February 6, 2017 final judgment related to an action brought by the Securities and Exchange Commission (the “SEC”) against Harrison Katzen as a result of a fraudulent investment scheme that defrauded approximately sixty (60) investors located in the United States and abroad of approximately \$3.2 million. Pursuant to the Final Judgment, Mr. Katzen was ordered to pay a total of \$350,000 in disgorgement, prejudgment interest, and a civil penalty to the SEC. Based on the unique name and a FINRA Brokercheck search that reflects Mr. Katzen’s employment history to include prior employment at Lehmen Brothers (which is also reflected on Mr. Katzen’s public LinkedIn profile), we believe the Applicant’s representative is the same Mr. Katzen who was charged with the aforementioned violation of federal securities laws.

The COM remains deeply concerned about the Application proposed by the Applicant herein. The operation of a short-term rehabilitation and “detox” facility with a revolving door of close to 800 separate residents in any given year¹ represents a drastic change from the long-term nursing home that the facility was previously used for. Numerous safety and security concerns come to mind with this volume of troubled transient individuals living adjacent to a residential area and approximately one mile from an elementary school.

Further troubling are the serious allegations related to patient care and the manner in which employees have allegedly been treated at the Kearny Facility. Ms. Rogers’ allegations of threats to jeopardize her clinical license for bringing to light serious ethical violations on the part of a manager who was allegedly a “gym buddy” of the Applicant’s management team is disturbing to say the least.

¹ We calculated this based on the Applicant’s testimony that they expect to have up to 80 residents at any given time with an average stay of 30-45 days. If the average stay is 37.5 days this means that there will be approximately 9.7 turns of each bed in any given year. 80 times 9.7 equals 776. Even at 85% occupancy though (68 residents), this still equates to approximately 660 residents coming and going from the facility in any one year.

The checkered history on the part of the Applicant's co-founder as a result of the Final Judgment for fraud calls into question the veracity of his prior testimony and creates substantial concerns with the ability of this Applicant to operate the proposed facility without incident. The COM believes the operation of a short-term mental health and detox facility similar to the Kearny Facility by a co-founder charged with securities fraud will have a substantial detrimental impact on the public welfare within this community.

Very truly yours,

MEYNER AND LANDIS LLP

/s/ Matthew P. Dolan

Matthew P. Dolan

cc: Alexander Fisher, Esq. (via email)
William C. Sullivan, Jr., Esq. (via email)
Committee of Managers of Llewellyn Park

Exhibit 1
MJP Planning Memorandum re Zinnia Health, West Orange_Progress

MJP LAND USE PLANNING LLC

Michael J. Pessolano, P.P., AICP, Principal

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Planning Memorandum

To: Llewlyn Park Committee of Managers

From: Michael J. Pessolano, PP/AICP

Re: Zinnia Health - Application to establish a mental health and substance abuse treatment center at 33 Mount Pleasant Ave, West Orange, NJ

Date: February 3, 2025

I. INTRODUCTION

Applicant Zinnia Health requests the following action of the West Orange Zoning Board of Adjustment (ZBA):

- A. Appeal/Interpretation that its use is a hospital, which, if unsuccessful for Zinnia, will be followed by item 2 below.
- B. A finding that the proposed use is a Conditional Use (nursing home or long-term residential care facility) in the B-2 Zone, in which case, a D3 Conditional Use variance would be required due to all criteria for such use not being met.
- C. If the Conditional use route fails, then a D1 Variance is sought.

At this writing, the application has been partially presented in two meetings. The third meeting, scheduled for February 13, 2025, is expected to focus on planning testimony and cross-examination. This memo is an initial response to the application, as presented to date and the Applicant's planning report.

This memo is not intended to be comprehensive in its scope but rather to set forth initial responses to the issues and concerns regarding what is proposed, in order to assist the Board in evaluating this proposal. The content herein will be further expanded upon in testimony by the author following testimony by the Applicant's Professional Planner.

II. SITE AND AREA:

- A. Single “L-shaped” tax lot, most recently occupied by Canterbury Assisted Living Facility. [Note: the application rider and planning report assert that the former use was a nursing home. On-line information associated with the site identifies the Canterbury facility as an assisted living facility and provide interior photos of an upscale residential setting and not that of a nursing home]. Building is now vacant; lot contains 2.181 acres (95,010 sq. ft.). Lot traversed by open stream at rear.
- B. Site is improved with a one-story principal structure, presumably still fitted for use as an assisted living facility. Site also has a narrow paved driveway to a drop-off entrance and 26-space paved parking area. Untrimmed vegetation is evident at multiple sections of the site perimeter.

III. USE TERMS:

The following uses mentioned below in items III.1 to III.6 are uses that are permitted in the OB-2 Zone District of West Orange. “Hospital” and “Office Building” are principal permitted uses, while the other 4 uses are permitted as principal conditional uses. They are each discussed as to their relationship to the proposed use in the subject application.

1. HOSPITAL – Proposed use is not a hospital.

- a. While the Chapter 25 West Orange Development Regulations do not specifically define “hospital,” the description of the proposed use given by the applicant would offer 2 principal services for its patrons – mental health treatment and substance abuse treatment for resident patrons. Hospitals commonly contain much more facilities and services for *patients*, such as diagnostics, surgical services, emergency services, lab services. Furthermore, hospitals typically welcome visitor interactions with *inpatients*, whereas the patrons of the proposed facility will not have visitors. The word “patient” is emphasized to distinguish them from being considered residents.
- b. Caution is urged in relying on definitions crafted by the State of New Jersey or its agencies. Definitions for medical facilities regulated or overseen by the State of New Jersey do not necessarily have a

zoning and land use regulation context but are crafted to support implementation of State policies regarding administration aspects.

- c. West Orange Master Plan Re-examination Reports, prepared in 2010 and 2019, note that an overhaul of development regulations, including definitions, has not been conducted for at least 45 years, as of 2025. 45 years ago or earlier, it may have been unnecessary for the Governing Body of the Township to define a hospital because it was such an obvious and rare facility. Since that time, medical care and treatment facilities have evolved such that certain medical services normally associated with hospitals have appeared as stand-alone uses, such as surgery centers, physical therapy/rehabilitation centers, centers for sleep medicine, etc..
- d. There is no valid basis for considering the proposed use a hospital nor for relying on State definitions that have nothing to do with the municipal zoning function or purposes.

- 2. Congregate Care Facility – The proposed use is not a congregate care Facility, which is a type of housing facility and not principally a treatment facility. This use is defined in Chapter 25, as follows:

“CONGREGATE CARE — Shall mean housing which is specially designed multi-unit housing for independent to semi-independent people including community social and dining facilities. Individual living units include at a minimum, a living room/bedroom, bathroom, and kitchenette. These facilities must offer at least one hot meal per day to each occupant and some housekeeping services within each unit.”

- 3. Nursing Home – Proposed use is not a nursing home.
 - a. Nursing homes provide a niche of services for aged and infirm persons, typically providing nursing care and allowing visits by family and friends of inpatients. In sharp contrast, the proposed use intends, as its principal purpose, to provide very specific therapies and treatments to those who have significant mental health disorders or addiction to substances and residents will not

have visitors. See the Chapter 25 definition of Nursing Home/Long-term Care Residential Health Care Facility , below under item 5.

4. Assisted Living Facility – Proposed use is not an assisted living facility.
 - a. Assisted living facilities are a type of housing that are typically occupied by those who want a place to live as independently as possible but have ready access to assistance with day-to-day activities and routines, as needed and may receive visitors. They may or may not have the ability/facilities to cook their own meals. Residents of assisted living facilities are not there to principally receive mental health or substance abuse treatments for a prescribed short time frame of 30-60 days. Rather, they may live at such a facility indefinitely, until another level of care in a different facility is required or death. Chapter 25 of the Township Code includes the following definition of “Assisted Living,” which clearly does not describe the proposed use in any way:”

“ASSISTED LIVING — Shall mean a facility which is licensed by the State of New Jersey, as an Assisted Living Facility, to provide apartment style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor. Apartment units offer at a minimum, one furnished room, a private bathroom, a kitchenette without a stove, and a lockable door on the unit entrance.”

5. Long-Term Care Residential Care Facility – Proposed use is not a long-term care facility. Chapter 25 contains the following two definitions covering long-term care uses:

“NURSING HOME AND/OR LONG-TERM CARE RESIDENTIAL HEALTHCARE FACILITY — Shall mean a facility, licensed by the Department of Health of the State of New Jersey as a facility, to provide health care under medical supervision and continuous nursing supervision and nursing home level care for 24 or more consecutive hours to two or more residents who are not related to the governing authority by marriage, blood, or adoption.

The residents require continuous nursing care and services above the level of room and board because of their physical condition.

NURSING HOME-LEVEL CARE — Shall mean care provided to individuals who have chronic medical condition(s) required by the New Jersey Department of Health for the operation of a long-term health care facility.”

- a. While the proposed use purports to be residential and provide care, it is not designed to retain its patrons for a long-term period of time. Instead, the use, as described by the Operator, would typically involve stays of limited duration – 30-60 days. The proposed use allows no visitors, whereas visitors to residents of long-term care facilities are encouraged. Finally, the residents of the proposed use would not necessarily require continuous nursing care as they are said to be able to check themselves out at any time.
6. The OB-2 Zone allows “Office Building” as principal permitted use. The proposed use is not an office building but rather a short-term residential facility for treatment of mental health disorders and substance addictions. The surrounding medical uses in the neighborhood are true office buildings, as they have no residential component and limited hours of operation, making them significantly different in nature, rather than similar, to the proposed use.
7. The application by Zinnia Health seeks to appear like other uses in order to provide a “hook” or rationale for a claim that it is somehow permitted by the Township Code. The attempted association with the above uses must fail because the proposed use is uniquely and substantially different in nature than any of the above uses discussed in items 1-6 above.

IV. PLANNING JUSTIFICATIONS - by the Applicant’s Planning Report:

1. REQUEST FOR AN INTERPRETATION THAT THE PROPOSED USE IS A HOSPITAL AND THEREFORE A PERMITTED USE IN THE OB-2 ZONE.

- i. Based on the significant differences between a traditional hospital and the proposed use, as identified in item III (1) above, this request should be rejected by the Board.

2. REQUEST FOR CONSIDERATION THAT THE PROPOSED USE IS A NURSING HOME OR LONG-TERM CARE FACILITY AND THEREFORE PERMITTED AS A CONDITIONAL USE IN THE OB-2 ZONE.

- i. Due to the plain fact that the proposed use is not even called a nursing home or long-term care facility in the application, together with the reasons in item III (2) above that the proposed use and a nursing home are substantially different in nature, this proposition must also fail.
- ii. The planning argument that the site hosted a nursing home/ long-term care facility previously and the proposed use continues such use is not rooted in any credible evidence that demonstrates the two uses are one and the same.
- iii. The facts on the record thus far for this application indicate that in terms of operations, duration of stay and specific services provided by each use (nursing home/long-term care facility and proposed use), the two uses are distinctly different. Furthermore, a “nursing home” and a “long-term care residential health care facility” are permitted conditional uses in the OB-2 Zone and a “residential mental health and substance abuse treatment facility” is not even mentioned anywhere in the Township’s Chapter 25 Development Regulations. The West Orange Chapter 25 Development Regulations are structured as a “permissive” ordinance, such that in order for a use to be allowed, it must be specifically listed as either a permitted use or a conditionally permitted use. In the absence of any mention of the proposed use in Chapter 25, the use is clearly not permitted in any Zoning District in the Township of West Orange.

3. REQUEST FOR A D1 USE VARIANCE FOR A USE NOT PERMITTED IN THE ZONE, IF THE OTHER REQUESTS ARE DENIED

- i. The Applicant's Planning Report asserts that this use should be considered an "Inherently Beneficial" use and as such, the D(1) variance request should be reviewed pursuant to the relaxed standard set forth in the Sica v Wall Township NJ Supreme Court decision, which does not require demonstration of site suitability or special reasons or the policy reconciliation/enhanced quality of proof test.
- ii. This author sees the proposed use not as inherently beneficial but rather as one of many commercial uses that have manifested to serve those with mental health disorders and substance addictions. It is noted that many medical uses that do good for their patrons are not afforded inherently beneficial use status. For example, any of the medical offices surrounding the subject site may be saving lives and reducing suffering but are not elevated to inherently beneficial status. They are simply providing medical treatment and care to people in need. Similarly, land use permitting applications for cellular communication towers and cell phone communication antennae are typically reviewed under the Sica standard of review, due to the many public benefits they afford. Yet, the Court stopped short of declaring cellular communications facilities inherently beneficial, noting they shall still be regarded as a commercial use. Thus, not every use that does substantial public good in New Jersey may or should be considered inherently beneficial. It is determined case-by-case.
- iii. Additionally, the proposed use is described in the Application Rider to the effect that it is all benefit and no detriment. However, the proposed use in the proposed location may be quite problematic, for the following reasons:
 - 1. Introduction into a stable neighborhood of a facility that will house in a concentrated manner on a revolving basis a very large new population of troubled individuals who may come and go at will without their own transportation would be a sharp change in land use not contemplated or vetted by the Township Committee or Planning Board. It

is one thing to provide medical services applicable to the general population. It is quite another matter to concentrate a large number of suffering individuals with unknown backgrounds and potentially violent and/or criminal histories on a site that is effectively not buffered at all from surrounding uses, which include many residents, presumably including children, and businesses.

2. Due to the potential emotional and mental instability of some prospective facility residents, Township EMS and Police service capacity may be exceptionally burdened by frequent visits to the subject premises and where such calls involve incidents outside the facility, the quality of life and business climate may be substantially diminished.
- iv. If the Board does determine that the proposed use is inherently beneficial, the above detriments should be weighed against the claimed benefits of the proposed use. The Board may impose reasonable conditions to mitigate impacts. However, the optimum accommodation of the proposed use would be to locate it on a well-buffered site that is not so proximate to residential and business uses, which cannot realistically be done at 33 Mount Pleasant Avenue.
- v. If the proposed use is determined to not be inherently beneficial, the following D(1) Use Variance analysis is offered for the Board's consideration:
 1. Particular Suitability – The site is *particularly unsuitable* for the proposed use. It is in a highly inappropriate location, closely surrounded by stable existing residential and commercial uses in which the potential for ongoing land use conflicts is high. It is poorly buffered by distance from surrounding uses. The existing building is only a few feet from an existing dwelling and there are numerous dwellings within 500 feet of the subject property. The site driveway is narrow and may easily become obstructed and block emergency access.

2. Special Reasons – The Applicant’s planning report asserts that several purposes of the Municipal Land Use Law would be advanced by the subject proposal.
 - a. Purpose A – Project delivers a beneficial use. This claim is not supported in the planning report by credible evidence that the benefits of the use outweigh the detriments.
 - b. Purpose G – Provide a variety of uses in appropriate locations according to the needs of the State’s citizens. Research by this author revealed that there are many residential/24 hour mental health and substance abuse treatment centers within 10 miles of the subject site, which may satisfy the need in this geographic area. The site is not a particularly suitable or appropriate location for this use, as noted above.
 - c. Purpose I – Promote a desirable visual environment. The Applicant’s planning report cites the current appearance of the existing facility as a basis for advancing this purpose. This should be given very little weight in light of the potential detriments from the operation of the use.
 - d. Purpose M – Promote the efficient use of land. Adaptive re-use of the existing building is more of a benefit to the applicant than the public, due to the potential for ongoing conflicts from the operation of the proposed facility. This point should also be afforded very little weight.
3. Prong 1 of the negative criteria, public detriment.
 - a. The Applicant’s planning report asserts there will be no substantial detriment to the public on the basis of operational and management testimony by the Applicant. This conclusion is premature, as all stakeholders have yet to comment.

- b. The planning report claims that the use is compatible with the mixed land use character in the area and delivers a health care use on a site that has historically been associated with a health care use. The proposed use has *never* been on this site and is a potentially detrimental use for the existing stable uses around it. The prior use was more residential in character, whereas the proposed use is a treatment center with an expected steady flow of hundreds of transient occupants per year. Transient occupancy by troubled persons, especially of such magnitude as is proposed, may have an ongoing de-stabilizing effect on the surrounding neighborhood.
- 4. Prong 2 of the negative criteria – substantial impairment to the intent and purpose of the zone plan (Master Plan) and zoning ordinance. The Applicant’s planning report states that there would be no such impairment because the use is akin to many of the medical uses that are permitted in the OB-2 zone and the degree of departure is not substantial. These assertions are flawed for the following reasons:
 - a. The proposed use is not addressed or even mentioned in the most recent re-examinations of the Master Plan. Nor is it specifically permitted in the Zoning Ordinance (Chapter 25), making it a prohibited use per section 25-3.2.d.
 - b. The surrounding uses are office buildings, which are permitted uses. The proposed residential mental health and substance addiction treatment center is anything but an office building.
 - c. As discussed above, there are significant differences in the nature of the proposed use that fail to align it with any of the permitted conditional uses in the OB-2 Zone.

- d. The proposed use is not new or emerging. It has been present in nearby Essex County communities for decades. It is therefore illogical that the Governing Body was not aware of it as it considered modifications to the Chapter 25 regulations over time. Therefore, the proposed non-permitted use fails the required “enhanced quality of proof” evaluation to reconcile its ongoing omission from the Zoning Ordinance as a permitted use.

V. CONCLUSIONS.

The proposed use, which would intensively concentrate a great number of transient, troubled persons in a single location in very close proximity to stable, low-density residential uses and businesses, is sharply different from any use permitted in the OB-2 District and the prior use of the property. It is therefore hostile to the West Orange Zone Plan and Zoning Ordinance, which make no specific reference or accommodation for permitting, either as-of-right or conditionally, a mental health facility/substance abuse treatment facility.

Due to the potential for ongoing use conflicts in the surrounding neighborhood, the use would be a poor fit in the proposed setting and does not meet the criteria under the Sica analysis for inherently beneficial uses or the Medici analysis for non-inherently beneficial uses. Finally, there is no valid basis for a finding that the proposed use is a permitted conditional use in the OB-2 Zone.

ABOUT THE AUTHOR

MICHAEL J. PESSOLANO, PP, AICP, is Principal and founder of MJP Land Use Planning LLC. Since its founding in 2010, MJP Land Use Planning has served private and public sector clients by providing professional planning services in development and redevelopment contexts. His work mainly involves extensive participation in hearings concerning development as an expert planning witness, serving applicants and objectors.

Prior to forming his own company, Mr. Pessolano was a Senior Planner and Project Manager with H2M Associates, Inc. in Parsippany where he oversaw the delivery of development review services to 6 Northern New Jersey Municipalities and provision of planning products to a variety of client communities. He holds a Master of Urban Planning degree from City University of New York, Hunter College and is a licensed Professional Planner in the State of New Jersey and a licensed real estate salesperson in New Jersey.

Exhibit 2a
Linda Rodgers-Cromer, LCADC v. Zinnia Health LLC, Daniel Cincotta, Deena Scher,
Docket No.: ESX-L-004622-23

Paul G. Hunczak (N.J. Attn. ID#039691989)
Douglas C. Gray (N.J. Attn. ID#008672007)
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Attorneys for Plaintiff, Linda Rodgers-Cromer, LCADC

	:	SUPERIOR COURT OF NEW JERSEY
LINDA RODGERS-CROMER, LCADC,	:	LAW DIVISION: ESSEX COUNTY
	:	DOCKET NO.: ESX-L-_____-2023
Plaintiff,	:	
	:	
-v-	:	Civil Action
	:	
	:	<u>COMPLAINT & JURY DEMAND</u>
ZINNIA HEALTH LLC, DANIEL CINCOTTA,	:	
DEENA SCHER, JOHN and JANE DOES	:	
1-10, and ABC and XYZ CORPS 1-10,	:	
Severally and jointly,	:	
	:	
Defendants.	:	
	:	

Plaintiff, Linda Rodgers-Cromer, LCADC (“Plaintiff” or “Rodgers”), by way of Complaint against Defendants Zinnia Health LLC, Daniel Cincotta, Deena Scher, John and Jane Does 1-10 (fictitious names), and ABC and XYZ Corps. 1-10 (fictitious names), says:

THE PARTIES AND VENUE

1. Plaintiff is a resident of Essex County, New Jersey, having an address at 295 Hunterdon Street, Newark, New Jersey 07103.

2. Defendant Zinnia Health LLC (“Zinnia”) is a for-profit corporation organized and existing under the laws of the State of California having a principal place of business at 520 Newport Center Drive, Ste 550, Newport Beach, California 92660.

3. Zinnia holds itself out as a leader in the substance use and mental health treatment field and operates treatment facilities in Florida, California, Colorado, Indiana, Rhode Island and New Jersey.

4. Among the facilities owned and operated by Zinnia is the Endeavor House North treatment facility and sober house located at 206 Bergen Avenue, Kearny, New Jersey 07032 ("Endeavor House").

5. Defendant Daniel Cincotta ("Cincotta") is a resident of New Jersey who at all relevant times served as Zinnia's Vice President of Operations and had oversight responsibilities for the Endeavor House. Upon information and belief, Cincotta maintains a principal residence at 16 Vermeer Drive, Apt 17, South Amboy, New Jersey 08879.

6. Defendant Deena Scher ("Scher") is a resident of New Jersey who at all relevant times served as Zinnia's Regional Human Resources Manager and had oversight responsibilities for the Endeavor House. Upon information and belief, Scher maintains a principal residence at 25 Ellen Heath Drive, Matawan, New Jersey 07747.

7. Upon information and belief, Defendants John and Jane Does 1-10 are managers, employees, agents, servants or workmen of and/or independent contractors retained or otherwise authorized by Zinnia that were involved in the discriminatory and retaliatory conduct identified herein.

8. Upon information and belief, Defendants ABC and XYZ Corporations 1-10 are employees, agents, servants or workmen of and/or independent contractors retained or otherwise authorized by Zinnia that were involved in the discriminatory and retaliatory conduct identified herein.

FACTS COMMON TO ALL CAUSES OF ACTION

9. Rodgers is a 63-year-old African American woman.

10. At all relevant times, Rodgers was and is a licensed Marriage and Family Therapist/Licensed Clinical Alcohol & Drug Counselor in good standing with the New Jersey Division of Consumer Affairs and the New Jersey Board of Marriage and Family Therapy Examiners (the "Board"). *See N.J.S.A. 45:8B-34 et seq.*

11. On or about January 17, 2022, Zinnia hired Rodgers as an Outpatient License Clinician earning \$70,000 a year.

12. In this role, Rodgers provided group and individual therapy to residents and outpatients of the Endeavor House.

13. Rodgers reported directly to Idris Rahman, also a licensed therapist and the Endeavor House's Assistant Clinical Director, and was indirectly supervised/managed by Cincotta, Zinnia's New Jersey-based Vice President of Operations, and Estefania Riofrio, the Endeavor House's Clinical Director.

14. On Monday, December 26, 2022, the day after Christmas, one of Rodger's clients, a vulnerable inpatient substance abuse patient, reported to Rodgers that she was sleeping with Steven Costa, Operational Manager, a Zinnia and Endeavor House staff member.

15. Upon information and belief, Costa reported directly to Cincotta, was a resident overseer in Zinnia's Bloomfield House, an all-male sober facility, and supervised operational staff for Zinnia's male and female sober houses.

16. As the patient was in recovery and being actively treated by Zinnia for substance abuse, for Costa to be engaging in a romantic/sexual relationship with Rodger's

client constituted a violation of, among other things, federal and state law, Zinnia's licensing obligations, Zinnia's internal policies, and governing professional standards.

17. As Rodgers was bound by patient confidentiality but also knew Costa's conduct to be a serious ethical breach and a violation of applicable law (in addition to being a threat to her client's sobriety, treatment and well-being), Rodgers was obligated to report Costa's misconduct, including pursuant to the terms of her own license and in accordance with Zinnia's internal policies.

18. In light of these competing ethical and legal obligations and Rodgers' good faith belief that laws had been and were being violated on an ongoing basis and her patient's treatment and care was being compromised, Rodgers reached out to Rahman, her direct supervisor and a fellow certified and licensed therapist having responsibility for the relevant patient's care, for advice on how to handle the matter.

19. After receiving the report about Costa and Rodger's patient and their ongoing relationship, Rahman told Rodgers to go back to her office because he was supposedly receiving an important call.

20. Rodgers worked at her desk for a few more hours on December 26 but received no response from Rahman.

21. Rodgers returned to Rahman's office at the end of the day because it was the week between Christmas and New Years and Rodgers was scheduled to be out on vacation for the next three days, but Rahman had already left the office for the day without following up with her about Costa and Rodger's patient.

22. Rodgers heard nothing from Rahman, Zinnia's Human Resources Department, or anyone else during her holiday, and she went back to work on Friday, December 30, 2022.

23. After facilitating a group therapy session in the morning, Rodgers went to Rahman's office again to follow-up on the Costa report.

24. To Rodgers' shock, Rahman indicated at that time that Costa had filed a complaint against Rodgers accusing her of improperly "gossiping" about Costa and/or defaming him.

25. Given that the only person Rodgers had discussed the matter with was Rahman himself, a direct supervisor also bound by patient confidentiality to whom she had a legal and ethical obligation to report the misconduct, it became evident to Rodgers that Rahman had disclosed her report to Costa who had been using her three-day absence from Zinnia to "set her up," potentially by encouraging other patients to make coerced and/or falsified claims about Rodgers.

26. That Rahman, Costa, and others in Zinnia's management were collaborating appeared to be confirmed when Rahman received a call he indicated was from Costa who was "on his way" to Rahman's office.

27. Rahman, visibly flustered, rushed Rodgers from the office and indicated that he would follow up with her after he had received Costa.

28. Shortly thereafter, Rahman called Rodgers back into his office where Scher, Zinnia's Regional Human Resources Manager, was on the phone.

29. Scher told Rodgers she was being sent home pending an investigation.

30. Rodgers asked Scher a number of questions about why and how she could possibly be subject to investigation much less discipline for bringing Costa's misconduct to the attention of her supervisor, but Scher refused to answer Rodgers' inquiries, claiming that Rodgers would have the right to ask pertinent questions at a meeting to be held on Tuesday, January 3, 2023.

31. In fact, that meeting did not happen and Rodgers was not contacted by anyone from Zinnia until she was called by Scher and Riofrio, Endeavor House's Clinical Director, on Thursday, January 5, 2023.

32. Scher and Riofrio informed Rodgers that Zinnia's purported "investigation" (which apparently did not include interviewing Rodgers) had allegedly indicated that Rodgers had broken patient confidentiality and Rodgers was being terminated, ostensibly for that reason.

33. In this call, Scher and Riofrio also indicated that Zinnia purportedly felt compelled to report Rodgers' alleged breach of patient confidentiality to the Board.

34. Rodgers protested vigorously, noting that any claim that she had breached patient confidentiality was false and pretextual as she had only informed Rahman about Costa's misconduct, and sought information about what her termination and the direct threat to her license (and livelihood) was supposedly based on.

35. Scher and Riofrio demurred, claiming all such information was confidential.

36. Rodgers continued to push back at her retaliatory treatment, noting among other things the legal and regulatory violations of Zinnia management arising from their failure to protect her client from Costa's predatory behavior while simultaneously

sheltering Costa from any and all responsibility for his misconduct, and Rodgers ultimately terminated the call.

37. Scher and Riofrio then called Rodgers back and indicated that, upon reconsideration, Zinnia would not be reporting Rodgers to the Board and further noted that Zinnia management did not intend to challenge Rodgers' unemployment application.

38. After her termination, Rodgers received a copy of an email that had been sent by a former Endeavor House employee who had quit in disgust after reporting Costa for sleeping with a number of different residents/patients, staff members, and engaging in various other wildly inappropriate and likely illegal behaviors, including sending naked pictures to clients and staff members.

39. As was reflected in the email, Costa's misconduct had previously been reported to a number of people within Zinnia's management structure.

40. However, as with Rodgers' reporting of Costa's predatory and illegal behaviors that threatened the treatment and care of Zinnia's clients, Costa had apparently been protected by others in Zinnia's management with whom he was personal friends and/or "gym buddies," including, upon information and belief, Cincotta.

41. It is Rodgers' understanding that as a result of the wide circulation of the email by her former colleague (with whom Rodgers did not have a personal or professional relationship), staff from Zinnia's corporate offices flew to New Jersey, conducted an investigation, and Costa was terminated as a result of his abusive and illegal behaviors.

42. Upon information and belief, Cincotta has also been terminated by Zinnia as a result of his sheltering of Costa, his retaliatory conduct against Rodgers, and other misconduct.

43. Not only has Rodgers not been contacted by Zinnia at any point since her wrongful termination (including in connection with the investigations of Costa and or Cincotta that led to their terminations), in contravention of Scher's and Riofrio's assurances to her, Zinnia has in fact challenged Rodgers' application for unemployment benefits.

44. Upon information and belief, Rodgers was replaced by Zinnia in her role as an Outpatient Licensed Clinician for the Endeavor House by one or more persons who were substantially younger than 63 years old.

FIRST COUNT
**(Retaliation in Violation of the New Jersey Conscientious
Employee Protection Act, *N.J.S.A. 34:19-1 et. seq.* – All Defendants)**

45. Plaintiff repeats and realleges the allegations set forth above as if set forth at length herein.

46. At all relevant times, Defendants were each acting as an "employer" within the meaning of *N.J.S.A.*, 34:19-2(a).

47. Plaintiff, a Marriage and Family Therapist and License Clinical Alcohol & Drug Counsel licensed by the New Jersey Division of Consumer of Affairs and the New Jersey Board of Marriage and Family Therapists, is a "licensed or certified health care professional" within the meaning of *N.J.S.A.*, 34:19-2(a).

48. Plaintiff reasonably believed that Defendants' conduct, activities, directives, practices and procedures, in particular in connection with Costa's predatory and exploitive behaviors:

- (i) constituted violations of a law, or a rule or regulation promulgated pursuant to law, including without limitation *N.J.A.C.* 10:161A-17.2(a)(9) & 10:161A-

1.7(c)(18); 2014 *ACA Code of Ethics*, A.5.a; *NAADAC/NCC AP Code of Ethics* I-23.;

- (ii) constituted improper quality of patient care; and/or
- (iii) were incompatible with clear mandates of public policy concerning the public health, safety or welfare.

49. Plaintiff reported, objected to and opposed such conduct, including by complaining to Rahman, Scher, Riofrio, and other senior management and human resources personnel.

50. As a result of Plaintiff's reporting of and objections to such conduct, Defendants undertook adverse employment action and otherwise retaliated against Plaintiff, including by terminating her on pretextual grounds.

51. Defendants' adverse employment action against and termination of Plaintiff was egregious, willful, wanton and in reckless disregard of Plaintiff's rights.

52. Defendants' senior management, upon information and belief including but not limited to Cincotta, Scher, and other senior managerial and human resources/legal personnel, directly participated in the relevant unlawful conduct.

53. Defendants' retaliatory conduct has inflicted, and will continue to inflict, substantial injury upon Plaintiff, including without limitation economic damages including loss of income and benefits as well as emotional distress damages.

WHEREFORE, Plaintiff demands judgment against all Defendants awarding her compensatory damages, including but not limited to front pay; back pay; the value of health insurance and other benefits, commissions, bonuses and vacation; damages for emotional distress; punitive damages; pre- and post-judgment interest; counsel fees and costs of

litigation pursuant to *N.J.S.A.* 34:19-13(d); and such other relief as the Court may deem just and appropriate under the circumstances.

SECOND COUNT

(*Pierce v. Ortho Pharm. Corp.*, 84 N.J. 58 (1980) – Wrongful Termination)

54. Plaintiff repeats the allegations stated above as if set forth at length herein.

55. Defendants' wrongful conduct, as set forth above, violated "clear mandate[s] of public policy" and/or constituted illegal activities and unconscionable practices, as set forth in *Pierce v. Ortho Pharm. Corp.*, 84 N.J. 58 (1980).

56. Plaintiff's objections to such wrongful conduct, as set forth above, constituted "protected activities" under *Pierce*.

57. Defendants' termination of Plaintiff was premised, in whole or part, upon Plaintiff's exercise of protected activities and thus constituted a wrongful termination within the meaning of *Pierce*.

58. Defendants' wrongful termination of Plaintiff has inflicted, and will continue to inflict, substantial injury upon Plaintiff, including without limitation economic damages including loss of income and benefits as well as emotional distress damages.

WHEREFORE, Plaintiff demands judgment against all Defendants awarding her compensatory damages, including but not limited to front pay; back pay; the value of health insurance and other benefits, commissions, bonuses and vacation; damages for emotional distress; punitive damages; pre- and post-judgment interest; counsel fees and costs of litigation; and such other relief as the Court may deem just and appropriate under the circumstances.

THIRD COUNT

(New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 *et seq.* – Age)

59. Plaintiff repeats the allegations stated above as if set forth at length herein.

60. Plaintiff was 63 years old and, upon information and belief, was the oldest therapist working at Endeavor House.

61. Plaintiff was terminated by Zinnia, in whole or in part, because of her advanced age.

62. Upon information and belief, Zinnia replaced at least a substantial portion of Plaintiff's job duties by hiring and assigning them to one or more persons significantly younger than Plaintiff.

63. Zinnia wrongfully terminated Plaintiff and has thereby caused, and continue to cause, Plaintiff substantial and foreseeable injury.

64. Zinnia's conduct has caused, and continues to cause, Plaintiff substantial and foreseeable injury, including without limitation economic damages including loss of income and benefits as well as emotional distress.

65. Zinnia's conduct was egregious, willful and wanton and in reckless disregard of Plaintiff's rights and involved extensive upper management participation.

WHEREFORE Plaintiff demands judgment against Zinnia awarding her compensatory damages, including but not limited to front pay, back pay, and the value of health insurance and other benefits, commissions, bonuses, and vacation; damages for emotional distress; punitive damages; pre- and post-judgment interest; counsel fees and costs of litigation pursuant to *N.J.S.A. 10:5-27.1*; and such other relief as the Court may deem just and appropriate under the circumstances.

FOURTH COUNT
**(New Jersey Law Against Discrimination , N.J.S.A. 10:5-1 et seq. –
Aiding and Abetting Liability)**

66. Plaintiff repeats the allegations stated above as if set forth at length herein.

67. Defendants each aided and abetted each other's wrongful acts and violations of the LAD.

68. Defendants each performed wrongful acts that caused Plaintiff injury and were in derogation of Plaintiff's rights under the LAD as is set forth above.

69. Defendants were all generally aware of their roles as part of the overall illegality and violations of Plaintiff's rights under the LAD as alleged above.

70. Defendants each knowingly and substantially assisted each other in the violation of Plaintiff's rights under the LAD as alleged above.

71. Defendants' conduct has caused, and continues to cause, Plaintiff substantial and foreseeable injury, including without limitation economic damages including loss of income and benefits as well as emotional.

72. Defendants' conduct was egregious, willful, and wanton, in reckless disregard of Plaintiff's rights and involved direct upper management participation.

WHEREFORE, Plaintiff demands judgment against all Defendants named herein awarding her compensatory damages, including but not limited to front pay; back pay; the value of health insurance and other benefits, commissions, bonuses, and vacation; damages for emotional distress; punitive damages; pre- and post-judgment interest; counsel fees and costs of litigation pursuant to *N.J.S.A. 10:5-27.1*; and such other relief as the Court may deem just and appropriate under the circumstances.

CERTIFICATION PURSUANT TO R.4:5-1

Pursuant to R. 4:5-1, the undersigned hereby certifies that this controversy is not the subject of any other action pending in any other Court or of a pending arbitration proceeding, nor is any action or arbitration proceeding contemplated, nor are other parties required to be joined in this action.

DESIGNATION OF TRIAL COUNSEL

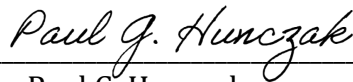
Plaintiff designates Paul G. Hunczak, Esq., as trial counsel in this matter.

JURY DEMAND

Plaintiff hereby demands trial by jury of all issues so triable.

MORRIS, DOWNING & SHERRED, LLP

Attorneys for Plaintiff, Linda Rodgers-Cromer, LCADC



Paul G. Hunczak
Attorney I.D. #039691989
Douglas C. Gray
Attorney I.D. #008672007

Dated: July 19, 2023

Exhibit 2b
Sysco Metro New York, LLC v. Zinnia Health, LLC, et. al,
Docket No.: BER-L-000272-24

**LAW OFFICES OF
JOSEPH A. MOLINARO, L.L.C.**

648 Wyckoff Avenue
Wyckoff, New Jersey 07481
(201) 857-3075
Attorney ID# 001491994
jam@molinarolaw.com
Attorney for Plaintiff - *Our File No.* 16082

SYSCO METRO NEW YORK, LLC
Plaintiff,

v.

ZINNIA HEALTH, LLC, AW II, LLC
doing business as ENDEAVOR HOUSE
NORTH, LLC and ADVANCED
HEALTH AND EDUCATION, LLC
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET #

CIVIL ACTION

COMPLAINT

Plaintiff, Sysco Metro New York, LLC who transacts business throughout the State of New Jersey including Bergen County, State of New Jersey, by way of Complaint against Defendants Zinnia Health, LLC, AW II, LLC doing business as Endeavor House North, LLC and Advanced Health Education, LLC, says:

FACTS COMMON TO ALL COUNTS
AND AS TO THE FIRST COUNT/BREACH OF CONTRACT

1. Plaintiff Sysco Metro New York, LLC sold and delivered to the Defendants Zinnia Health, LLC, AW II, LLC doing business as Endeavor House North, LLC and Advanced Health and Education, LLC (hereinafter “Defendants”) businesses located in Kearny, Hudson County, State of New Jersey at its request certain goods, wares and merchandise or otherwise provided service to Defendants.

2. Plaintiff has performed all of its contractual obligations and tendered its required

performance to Defendants.

3. Credit has been given all payments, and there remains due and owing from Defendants to Plaintiff the Principal sum of \$63,714.07 plus reasonable attorney fees of \$14,760.24 (per the contract between the parties) for a total sum due of \$78,474.31, exclusive of pre-judgment and post-judgment legal interest and costs.

4. Payment of the aforesaid sum has been demanded and has not been made.

5. As a result thereof, plaintiff has sustained damage.

WHEREFORE, Plaintiff demands judgment against Defendants Zinnia Health, LLC, AW II, LLC doing business as Endeavor House North, LLC and Advanced Health and Education, LLC, jointly, severally or in the alternative for the sum of \$78,474.31 plus pre-judgment and post judgment contract or legal interest, attorneys fees, costs of suit and for whatever further and other relief the court finds appropriate and just.

SECOND COUNT
QUANTUM MERIT/UNJUST ENRICHMENT

1. Plaintiff repeats and realleges the allegations set forth in preceding paragraphs as if same were set forth at length herein.

2. Defendants owes the Plaintiff Sysco Metro New York, LLC for the reasonable value of goods sold and delivered or services provided upon the promise of the Defendants to pay a reasonable price for same.

3. Plaintiff tendered performance to Defendants based upon the express and/or implied promise by Defendants to compensate Plaintiff for the value of goods sold and delivered and/or services provided.

4. Plaintiff expected that defendants would provide the requisite remuneration at the time they tendered performance and it would be unjust for Defendants to receive the goods sold

and/or delivered without accounting to Plaintiff for same.

5. It would be inequitable if these Defendants were to receive the benefit of the goods sold and delivered and/or the services provided and not be made to account to the Plaintiff for the fair value of goods sold and delivered by Plaintiff.

6. Remuneration has been demanded but has not been made.

WHEREFORE, Plaintiff demands judgment against Defendants Zinnia Health, LLC, AW II, LLC doing business as Endeavor House North, LLC, Advanced Health and Education, LLC jointly, severally or in the alternative for the sum of \$78,474.31 plus pre-judgment and post judgment contract or legal interest, costs of suit and for whatever further and other relief the court finds appropriate and just.

THIRD COUNT
BOOK ACCOUNT

1. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as if same were set forth at length herein.

2. Plaintiff's books and records reflect that there are monies owed and outstanding by Defendants to Plaintiff.

3. Plaintiff's records establish that there is due from Defendants to Plaintiff Sysco Metro New York, LLC the sum of \$78,474.31 on a certain book account.

4. Payment of the aforesaid sum has been demanded, but the Defendants have failed to pay same.

WHEREFORE, Plaintiff demands judgment against Defendants Zinnia Health, LLC, AW II, LLC doing business as Endeavor House North, LLC and Advanced Health and Education, LLC, jointly, severally or in the alternative for the sum of \$78,474.31 plus pre-judgment and post judgment contract or legal interest, costs of suit and for whatever further and other relief the court

finds appropriate and just.

FOURTH COUNT
ACCOUNT STATED

1. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as if same were set forth at length herein.
2. Plaintiff has tendered to Defendants its statement relating to monies owed on account.
3. Plaintiff's statement disclose that there is due from Defendants to Plaintiff Sysco Metro New York, LLC the sum of \$78,474.31 upon an account stated between them.
4. Defendants did not dispute the accuracy or correctness of Plaintiff's statements and invoices.
5. Payment of the aforesaid sum has been demanded and has not been made.

WHEREFORE, Plaintiff demands judgment against Defendants Zinnia Health, LLC, AW II, LLC doing business as Endeavor House North, LLC and Advanced Health and Education, LLC, jointly, severally or in the alternative for the sum of \$78,474.31 plus pre-judgment and post judgment legal interest, costs of suit and for whatever further and other relief the court finds appropriate and just.

Law Offices of Joseph A. Molinaro, LLC.

Joseph A. Molinaro

JOSEPH A. MOLINARO

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Joseph A. Molinaro, Esq. is hereby designated as trial counsel for the plaintiff in the within matter.

RULE 4:5-1 CERTIFICATION

The undersigned hereby certifies to the best of my knowledge and as advised by Plaintiff, that this matter is not the subject of any other action pending in any other court of a pending arbitration proceeding and there are no other parties known who should be joined into this action.

RULE 1:38-7(b) DISCLOSURE

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with ***R.1:38-7(b)***.

Law Offices of Joseph A. Molinaro, LLC

/s/ Joseph Molinaro
JOSEPH A. MOLINARO

Dated: January 16, 2024

Exhibit 3
November 29, 2016 Complaint and February 6, 2017 Final Judgment

Andrew M. Calamari
Lara S. Mehraban
Alexander Vasilescu
Adam S. Grace
Brenda Wai Ming Chang
John Lehmann
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
Brookfield Place
200 Vesey Street, Room 400
New York, NY 10281
(212) 336-0178 (Vasilescu)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
-against-	:
	:
	16 Civ. <u>06606</u> ()
	:
	COMPLAINT
	:
HARRISON KATZEN,	:
	:
Defendant.	:
-----X	

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against
Defendant Harrison Katzen ("Defendant" or "Katzen"), alleges:

SUMMARY

1. This action arises out of Defendant's participation in fraudulent schemes to offer and sell sham securities to the investing public. These schemes raised approximately \$3.2 million in illegal proceeds from approximately 60 investors in the United States and overseas. Other scheme participants included International Stock Transfer, Inc. ("IST"), a registered transfer agent; Cecil Franklin Speight ("Speight"), IST's president and sole owner; and attorneys James L. Schmidt, II ("Schmidt") and Jonathan P. Flom ("Flom") – each of whom were

previously charged by the Commission for their roles in these schemes (*SEC v. International Stock Transfer, Inc. et al.*, 14-CV-4435 (ADS) (E.D.N.Y. July 2014); *SEC v. Schmidt*, 14-CV-5574 (WFK) (E.D.N.Y. September 2014); and *SEC v. Flom*, 14-CV-5575 (SLT) (E.D.N.Y. September 2014).

2. The schemes entailed offering and selling sham securities through a web of phony websites, internet advertisement, and an aggressive cold calling campaign – all of which, operating under the guise of seemingly legitimate investment firms, promised investors low risk and high rates of return. At the direction of Speight, Katzen prepared offering materials touting the purported issuers and the safety and benefits of investing in their securities and containing materially false and misleading statements. Investors who purchased the securities received only counterfeit certificates not worth the paper they were printed on.

3. None of the investor funds was remitted to the purported issuers of these securities. Instead, despite representations in the offering materials that the offering proceeds would be used by issuers, investor money was funneled into IST's bank account and thereafter spent almost as quickly as it came in with the lion's share distributed among scheme participants and spent on funding the ongoing schemes. Some proceeds were also transferred from IST's bank account into another corporate bank account over which Katzen and Speight shared signatory authority. In addition, in Ponzi-scheme-like fashion, some investor monies were used to make phony "interest payments" to other earlier investors.

VIOLATIONS

4. By virtue of the conduct alleged herein Katzen, directly or indirectly, singly or in concert, has engaged and is engaging in acts, practices, and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a),

Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

5. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), seeking to permanently restrain and enjoin Defendant from engaging in the acts, practices, and courses of business alleged herein.

6. The Commission seeks a Final Judgment ordering Defendant to disgorge ill-gotten gains and to pay prejudgment interest thereon, ordering Defendant to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), prohibiting Defendant from participating in any offering of penny stock pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and imposing on Defendant an officer and director bar pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2).

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

8. Venue lies in this District pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. The Defendant, directly and indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein, including by the offer and sale and the mailing of securities to residents in this District.

DEFENDANT

9. **Katzen**, age 34, is a resident of Lantana, Florida. He earned a BS and a MBA degree, and previously held Series 7 and 63 FINRA licenses. Katzen was employed and compensated by Speight on a part-time basis intermittently in 2010, then on a full-time basis by IST in or around May 2012 through at least April 2013. Katzen was listed as an officer and director of Dunhill Investment Holdings, Inc. (“Dunhill”).

RELATED PERSONS AND ENTITIES

10. **IST** is a Florida corporation incorporated in 2004, formerly with an office in Palm Beach, Florida. Speight was the sole owner, officer, and director of IST. On March 22, 2004, IST registered with the Commission as a transfer agent. Following an examination of IST’s business on June 14, 2013 by the staff of the Commission’s Office of Compliance Inspections and Examinations, IST filed a Form TA-W with the Commission, seeking to withdraw its registration as a transfer agent. The withdrawal was made effective on August 13, 2013.

11. **Speight**, age 56, was a resident of West Palm Beach, Florida. Speight was the sole owner, officer, and director of IST. He is presently incarcerated in FCI Sheridan in Sheridan, Oregon. On July 28, 2014, the Court entered a judgment on consent against Speight imposing an injunction against him and IST for securities law violations arising out of the conduct alleged in the complaint in the action captioned *SEC v. International Stock Transfer, Inc. et al.*, 14-CV-4435 (ADS) (E.D.N.Y.). Contemporaneously, Speight plead guilty to a related conspiracy to commit securities fraud charge in the parallel criminal action captioned *United States v. Speight*, 14-CR-379 (RRM) (E.D.N.Y.).

12. **Schmidt**, age 58, is an attorney licensed to practice in Florida. In September 2014, the Commission charged Schmidt with securities law violations arising out of the conduct

alleged in the complaint in the action captioned *SEC v. Schmidt*, 14-CV-5574 (WFK) (E.D.N.Y.). On February 25, 2016, Schmidt was found guilty by a jury of one count of money laundering arising out of charges in a related parallel criminal action. *United States v. Schmidt*, 14-CR-506 (RRM) (E.D.N.Y.).

13. **Flom**, age 59, is an attorney licensed to practice in Florida, Connecticut, and New York. In September 2014, the Commission charged Flom with securities law violations arising out of the conduct alleged in the complaint in the action captioned *SEC v. Flom*, 14-CV-5575 (SLT) (E.D.N.Y.). On June 24, 2016, Flom was found guilty by a jury of one count of money laundering arising out of charges in a related parallel criminal action. *United States v. Flom*, 14-CR-507 (RRM) (E.D.N.Y.).

FACTS

A. Overview of the Fraudulent Schemes

14. From at least 2012 to mid-2013, Speight conducted various securities offering schemes through his transfer agency, IST, to lure investors into purchasing fictitious (i) debt bonds purportedly issued by Altmark Holdings, Ltd. (“Altmark”), which promised 14% or 12.5% annual interest, depending on the specific bond issue, and (ii) equity stock purportedly issued by PDL Portfolio (XIX) Ltd. (“PDL”), which inexplicably promised a “fixed rate of 20%.”

15. Speight funded the creation of websites for bogus unregistered financial advisers, each claiming to employ teams of reputable financial specialists, who instead, peddled counterfeit securities to investors either by internet advertising or traditional “cold calling” (collectively “Cold Callers”).

16. Katzen had no direct contact with the Cold Callers; however, at Speight’s direction, Katzen prepared the written offering materials the Cold Callers used to solicit interest

in the fake investments. The offering documents touted high rates of return to be paid by the issuers, backed by their purportedly substantial corporate assets and business operations. In addition to guaranteeing return of investors' principal, the offering documents represented that investor funds would be used by the issuers for various corporate purposes.

17. All of these representations were false and Katzen was at least reckless in disregarding facts that should have led him to understand they were false. In fact, Altmark had never authorized the public offer and sale of its securities, and PDL was actually a corporate shell with no assets or business operations, only recently formed by Speight.

18. The Cold Callers, who worked out of "boiler rooms," were ultimately compensated with exorbitantly high commissions from the scheme proceeds for offering and selling the securities to investors. Katzen was aware of the Cold Caller's compensation levels, and that the securities being offered could not possibly generate the touted returns for investors as well as pay the Cold Caller's undisclosed commissions.

19. To further enhance the offerings' appearance of legitimacy and, at the direction of Speight, Katzen created term sheets and PowerPoint "pitchbook" presentations (collectively "offering materials") that falsely identified IST as "Paying Agent" through which principal and interest payments would be made to investors, and identified Schmidt as "Bond & Tax Counsel" for the issuers. In reality, Schmidt along with Flom merely used their attorney escrow accounts as conduits through which all investor money – less the substantial fees kept by Schmidt and Flom – was transferred to IST and, from there, used in ways wholly inconsistent with the disclosures made in the offering documents.

20. Katzen prepared these offering materials at least recklessly disregarding that certain factual statements included therein were materially false and misleading.

21. When Cold Callers succeeded in making a sale, they directed investors to wire their money to Schmidt or Flom's attorney escrow accounts, which obscured the fact that investor funds would not be delivered to the issuers, but instead, transferred into IST bank accounts.

22. Once IST received the money, Speight through IST created and sent counterfeit paper securities certificates to the investors. Speight held himself out to be an officer or director of Altmark and PDL when he signed the certificates.

23. As the scheme's continued success hinged on delivering the promised interest, Speight used some of the investor proceeds to fund fake "interest" payments to earlier investors.

24. In Ponzi-scheme-like fashion, the so-called interest was funded by investor money from an IST bank account and another bank account in the name of Dunhill. Speight served as Dunhill's President, while Katzen was listed as an officer and director of the company. Speight and Katzen shared signatory authority over Dunhill's bank account.

IST and Speight's Offer and Sale of Sham Altmark Bonds

25. Among the fake securities Speight and IST offered and sold to investors were corporate bonds purportedly issued by Altmark with a promised annual interest rate of 14% or 12.5% depending on the issue.

26. Altmark is an actual issuer of securities, founded in Switzerland and headquartered in Turks & Caicos. In 2007, Altmark issued high-yield bonds that have been held in electronic form in various accounts of Depository Trust Company ("DTC") participants. During the relevant time period, however, Altmark did not make any interest or principal payments through DTC to any holders of the debt securities. Despite the bonds being listed on a German stock exchange, the market for Altmark bonds was highly illiquid throughout the

relevant time period.

27. Unbeknownst to potential investors, Speight incorporated another Altmark entity – formed in Belize and bearing the same issuer name – that he intended to use to sell bonds spoofing the “real” Altmark securities. Cold Callers promised investors that the Speight created Altmark bonds were low risk and would pay high rates of return.

28. From at least May 2012 through April 2013, IST created and mailed phony paper bond certificates to investors while purporting to be Altmark’s transfer agent. Speight signed these certificates as a director of Altmark, even though he held no such position with “real” Altmark.

29. While the paper certificates created by Speight bore the Altmark name and a CUSIP number registered to an Altmark security, they contained a number of anomalies.¹ For instance, the back of the IST-issued certificates reflected Altmark as a Turks & Caicos company, but the front of the same certificates represented that Altmark was a Belize entity; the back of the certificates referenced Altmark as having collateral consisting of “treasuries,” “blue chip stocks,” and an “investment portfolio,” which was different from the mineral reserves collateral purportedly underlying the real Altmark bonds; and, contrary to how transfer agents typically operate, IST issued bond certificates to investors bearing numbers that were not in chronological order.

30. The Cold Callers promised annual interest payments of 14% or 12.5% to investors. IST and Speight used approximately \$94,000 of newly obtained investor monies to fund purported initial “interest” payments to earlier investors. Speight directed these “interest” payments to be made through an IST bank account, as well as the Dunhill bank account over

¹ CUSIP stands for “Committee on Uniform Securities Identification Procedures.” A CUSIP is a unique number that is used to identify a specific security.

which he and Katzen shared signatory authority. However, in April 2013, at Speight's direction, IST mailed a letter to investors who purchased the fake Altmark bonds informing them that the company (not IST or Speight who had been funding the "interest" payments using other investor monies) was suspending all interest payments going forward. Speight and IST made no further "interest" payments thereafter.

Katzen Assisted Speight and IST's Early Efforts to Monetize the "Real" Altmark Bonds

31. In early 2011, before commencing the offering of sham Altmark bonds, Speight first explored ways to monetize "real" Altmark bonds that Speight told Katzen he owned or controlled – either by obtaining cash loans collateralized by the bonds, or lending them for a cash fee to financial institutions to be used to satisfy their own regulatory capital requirements. In early 2011, Speight sought to engage in a potential transaction with a large multi-national banking institution located in Singapore, which contemplated lending Speight's "real" Altmark bonds to the bank in exchange for a series of interest payments. However, the bonds were not marketable, as there was no reported trading activity in the securities and therefore no current market pricing was available. Speight believed that assigning a market value to the Altmark bonds was essential to closing the deal with the bank.

32. Speight thought that he could obtain a market value for the bonds by entering into pre-arranged trades in the bonds – *i.e.* trades where the brokers and others colluding with them were on both sides of the transactions – on the German securities exchange where they were listed, and having the trades' artificial pricing quoted on Bloomberg.

33. Speight conscripted Katzen to facilitate getting Bloomberg to quote the prices of these Altmark bond trades. Katzen successfully got the trades quoted.

34. Katzen secured the Bloomberg postings by providing Bloomberg representatives

with erroneous information, which Speight provided to Katzen, about key aspects of the bonds, such as that the issuer was actively paying the specified coupon on its bonds, when Altmark was in fact not paying coupon or principal and had perpetually deferred its obligations under the bonds.

35. On occasion, Katzen also lent his assistance by intervening with Bloomberg representatives when the bid and ask prices arising from the prearranged trades were not being quoted on Bloomberg. For example, on September 6, 2011, Katzen sent Speight an email informing him: “I just checked Bloomberg and some old bids are still up on the price side I am assuming that means they are expired and old Let me know what you need me to do on the Bloomberg end as we get some trades off. I’m thinking we should reach out to [Speight’s Bloomberg representative in Germany] first to confirm he is settling instructions, and then reaching to my contact in Bloomberg Corp to make sure it is being accurately reflected.” To which Speight replied, “Once I speak with [Altmark’s market-maker] and get an idea of when and what we are doing as far as trades go – we will need to be on top of it.” Three days later, observing how “[b]id sizes on the 3 lots have now increased to B / A : 200 x 1200, but no trades have posted yet,” Katzen proposed, “I think we’ll have to wait for trades to post on the exchange and be booked . . . before they post onto Bloomberg. Maybe a call into [Speight’s Bloomberg representative in Germany] before he leaves for the end of the day might be beneficial....”

36. Although the prearranged trading scheme ultimately failed to assist Speight in monetizing his Altmark bonds, Katzen’s role in getting the bonds and the prearranged trade prices posted on Bloomberg significantly contributed to the subsequent Altmark boiler room scheme in 2012. Most notably, when Speight transitioned to selling sham versions of the Altmark bonds, having what appeared to be current pricing and trades quoted on Bloomberg

provided a basis for prospective investors to believe that the bonds had value and could be traded into a ready and liquid market.

Katzen Prepared Altmark Offering Materials Containing Materially False and Misleading Information

37. In 2012, after failing to monetize his “real” Altmark bonds, Speight and IST, with Katzen’s assistance, resorted to a scheme to create and offer fake versions of the Altmark bonds to the unwary investing public.

38. To support the scheme’s sales efforts, at Speight’s direction, Katzen created materials for the boiler room Cold Callers to utilize when offering the bonds to the public. Specifically, he prepared offering materials that purportedly described Altmark and the basic terms of the debt securities. The offering materials included numerous materially false and misleading statements in the offering materials that obscured the fact that the “real” Altmark had nothing to do with the sham securities being offered. Among other things, the offering materials represented that:

a. Altmark itself was issuing and offering its corporate bonds, and as such, “proceeds from the current sale of the Notes ... will be used by the Issuer” to fund an array of projects “at the discretion of the Issuer.” (Emphasis added). Proceeds raised from the offering were to be used by Altmark for a range of corporate projects including “extraction of oil,” “mining,” and “real estate development;”

b. Over the life of the bonds, Altmark would not only repay the investors’ principal, but also make periodic interest payments to the investors calculated at a rate of 14% or 12.5% per annum (depending on the specific bond issue). Interest payments would be made on dates determined “at the discretion of the Issuer;”

c. Under a section entitled “Benefits from Investing in Corporate Bonds,” the offering materials touted “Safety / Capital Preservation” as a benefit of investing in the Altmark bonds, “because a bond issuer must pay face value at maturity” making investors “more likely to recoup [their] original investment at a specific day in the future, compared to stocks, which have no maturities or guaranteed return of principal.” (Emphasis added). Likewise, the offering materials assured investors of “a steady stream of cash income” and “an element of predictability” from the issuer, Altmark, making “regularly scheduled interest payments;”

d. “Capital Appreciation” and the potential to “Reduce Portfolio Risk” were listed in the offering materials as additional reasons to invest in the Altmark bonds. The offering materials also stated that, due to their ability to be traded on the secondary market, the Altmark bonds could “help reduce the level of risk in an investment portfolio” and yet offer the opportunity to “be sold for a price higher than what was paid originally to acquire them.” A Bloomberg screenshot included in the pitchbooks showed bid and ask prices for “real” Altmark bonds above par, based on the prearranged trading on the German exchange;

e. The offering materials identified an array of “Service Providers” purportedly retained by Altmark in connection with the bond offerings, including: Dunhill as “Investment Advisor,” IST as “Trustee & Pay Agent,” and Schmidt as “Bond & Tax Counsel.” Term sheets for the various bond issuances specified that payments of principal and interest would be made through IST as Altmark’s “Paying Agent,” and provided a Belize address as the “Registered Address” for Altmark; and

f. Under a section entitled “Investment Strategy,” the offering materials stated that Altmark, under advisement by its investment adviser, Dunhill, had entered into an investment contract with “a Swiss Based Hedge Fund to provide sufficient liquidity in order to

provide monthly coupon payments” owed by Altmark on the bonds.

39. As Katzen at least recklessly disregarded, these representations in the offering materials were materially false and misleading. In reality: (a) Altmark never authorized the public offer and sale of its bonds through IST; rather, a shell entity formed by Speight in Belize and bearing the same name as Altmark, posed as the issuer in perpetuating the sham offerings; (b) none of the offering proceeds were transmitted to Altmark and were, instead, misappropriated by the scheme participants, including the outsized commissions paid to the Cold Callers; (c) Altmark would not pay any interest or principal to duped investors and never entered into an investment contract with any investment fund to finance the interest payments owed on the bonds - to the contrary, IST paid fake “coupon” payments to investors funded exclusively by other investors’ monies raised from the fraudulent offerings; (d) there was no potential for “capital appreciation” based on a rise in market price because the bonds actually being offered were fake, the market for the “real” Altmark bonds was highly illiquid, and the bid/ask prices quoted on Bloomberg were based on prearranged trades; and (e) IST, Dunhill, Schmidt, and Flom were not retained by the “real” Altmark in connection with the bond offerings, but rather, their sole purpose was to facilitate the scheme and to create the aura of legitimacy necessary to sell counterfeit versions of the bonds to investors.

40. In 2013, when investors in the sham Altmark bonds complained directly to Katzen via email about unpaid interest and their inability to contact the Cold Callers, Katzen forwarded those complaints onto Speight without directly responding to the investors’ concerns.

Katzen Prepared PDL Offering Materials Containing Materially False and Misleading Information

41. Speight and IST also fraudulently offered and sold stock certificates purportedly issued by a Belize pay day loan company called “PDL Portfolio (XIX) Ltd.” (“PDL”).

42. From June 2012 through October 2012, IST received at least \$187,000 in investor funds in connection with the offer and sale of shares of fake PDL common stock.

43. PDL is a corporate shell, not a real business entity. PDL never had any legitimate business operations, income producing assets, or employees.

44. Speight signed the stock certificates as President of PDL, although he is not an officer or director of the company, since PDL has no officers or directors.

45. As with IST’s Altmark certificates, the PDL certificates were worthless. They contain an “ID No.,” but no CUSIP; the certificates purport to be common stock certificates, but the offering materials inconsistently represent that the PDL “shares” will receive principal and a fixed interest rate of 20%; and the offering materials contain multiple references to “Notes” rather than shares. The offering materials also represent that PDL had registered a global note in the name of a nominee with DTC, but, contrary to the representations in the offering materials, no such PDL note is held by DTC.

46. Katzen prepared PDL offering materials that he at least recklessly disregarded contained this contradictory, false, and misleading information.

47. At the time, Katzen knew that PDL, at Speight’s direction, was only recently incorporated as a shell entity in the off-shore jurisdiction of Belize.

48. Given PDL’s new status as a company, the offering materials’ representations about a fully staffed and operational pay day loan business “in both the Domestic and International markets” – including “proprietary systems” with “full front and back end operations

currently in place to handle unlimited pay day loan type transactions” and partnerships with leading companies through which PDL offers “complete turnkey solutions” – could not possibly have been in place at the time Katzen prepared those claims.

49. As with the sham Altmark scheme, in the offering materials Katzen listed the same array of fictional “Service Providers” – including Schmidt, IST, and Dunhill – as those identified in the fraudulent Altmark offering materials.

Misuse of Investors’ Monies

50. Once a person agreed to make an investment in Altmark or PDL securities, the Cold Callers instructed them to wire funds to attorney escrow accounts maintained by Schmidt or Flom. Unbeknownst to the investors, Schmidt and Flom transmitted all investor monies that came into their accounts (except for their own fees and bank charges) to IST, rather than to the purported issuers.

51. Katzen monitored these movements of investor funds to Schmidt and Flom’s accounts, and their subsequent transfer of corresponding amounts (minus fees) to IST’s account. Katzen observed and recklessly disregarded that Schmidt often broke up funds received from investors into a series of smaller dollar amount wire transfers to IST, and that likewise Flom held onto investor funds for a period of time after the funds were received in his account before wiring them to IST’s account.

52. To document these fund transfers, Katzen created an internal IST spreadsheet (the “Altmark Spreadsheet”) that recorded IST’s receipt of investor funds in connection with the offer and sale of Altmark and PDL securities. This spreadsheet shows IST received approximately \$3.2 million from approximately 60 investors who purchased sham Altmark and PDL securities over approximately a one year time period.

53. IST did not remit any investor proceeds to the issuers, and instead, misappropriated the funds.

54. Some investor monies were also funneled from IST to a Dunhill bank account. Katzen and Speight shared signatory authority over Dunhill's bank account.

Sham Altmark and PDL Certificates and "Interest" Sent to Investors

55. IST paid investors approximately \$94,000 in supposed "interest payments" from the IST account and from the Dunhill account, into which IST had earlier transferred some investor money that had been received from Schmidt and Flom.

56. Neither the IST account nor the Dunhill account received any monies from Altmark or PDL with which to pay interest.

57. Instead, the "interest payments" made to investors by IST and Dunhill were funded by new incoming investor monies that IST received from the two attorney accounts.

58. As the schemes' ongoing success hinged on IST delivering timely interest payments, Katzen, at Speight's direction, kept track of the interest owed to investors. For example, in an email sent in May 2012, Katzen exhorted Flom to provide investor names because "[w]e are waiting to issue certs based on the confirmation and also need to send the coupon payment. To reiterate – this is extremely URGENT at this point since this is the first coupon payment for each client." Following up in June 2012, Katzen provided Speight with a chart of the interest amount owed to each investor and whether the investor had been paid, as well as "Client Profile" forms tailored to individual investors indicating his or her principal investment and the investor's preference on how coupon payments should be made (via wire or check).

59. Katzen recorded in the Altmark Spreadsheet calculations of annual and monthly

interest to be paid to each investor, and whether IST actually made an initial “interest payment” to those investors.

60. In addition, Katzen used the Altmark Spreadsheet to track IST’s issuance of the sham paper certificates which IST mailed to investors while purporting to act as the issuers’ transfer agent.

61. When Katzen undertook these efforts, he recklessly disregarded that the offer and sale of Altmark and PDL securities were fraudulent, and accordingly, any bond or stock certificates issued by IST or “interest” paid to investors was not consistent with the sale of legitimate securities.

FIRST CLAIM FOR RELIEF
(Violations of Sections 17(a) of the Securities Act)

62. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 61 of this Complaint.

63. Defendant, directly or indirectly, singly or in concert, knowingly or recklessly, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale of securities, acting with the requisite state of mind, (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or a course of business which operated or would operate as a fraud or deceit upon purchasers.

64. By engaging in the conduct described above, Defendant has violated, and unless enjoined will again violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder)

65. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 61 of this Complaint.

66. Defendant, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly, has: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person.

67. By reason of the foregoing, Defendant has violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 140.10b-5, promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter final judgments against the Defendant granting the following relief:

I.

Permanently, restraining and enjoining Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with him, who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15

U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

II.

Ordering Defendant to disgorge ill-gotten gains, plus prejudgment interest, and such other and further amount as the Court may find appropriate.

III.

Ordering Defendant to pay a civil money penalty 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).

IV.

Permanently barring Defendant from participating in an offering of penny stock, pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78s(d)(6).

V.

Permanently barring Defendant from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

VI.

Such other and further relief as to this Court deems just and proper.

Dated: New York, New York
November 29, 2016

By: _____



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

HARRISON KATZEN,

Defendant.

16 civ. 06606 (BMC)

FINAL JUDGMENT AS TO DEFENDANT HARRISON KATZEN

The Securities and Exchange Commission having filed a Complaint and Defendant Harrison Katzen 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 and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

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

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

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

II.

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

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

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

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited, for three years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$75,574, representing ill-gotten gains as a result of the conduct alleged in the Complaint, prejudgment interest thereon of \$9,479, and a civil penalty in the amount of \$264,947 pursuant to Sections 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation by paying \$350,000 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at

<http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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

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

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

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

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff

determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

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

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement

entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VI.

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.

Dated: February 4, 2017

Digitally signed by Brian M.
Cogan

UNITED STATES DISTRICT JUDGE