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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

EDL

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14 SECURITIES AND EXCHANGE COMMISSION,

15 Plaintiff,

16 v.

17 JOHN M. CINDEREY,

18 Defendant.  
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CV 12 1519

Case No.

CONSENT OF  
DEFENDANT JOHN M. CINDEREY

**CONSENT OF DEFENDANT JOHN CINDEREY**

1  
2 1. Defendant John M. Cinderey (“Defendant”) waives service of a summons and the  
3 complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over  
4 Defendant and over the subject matter of this action.

5 2. Without admitting or denying the allegations of the complaint (except as to  
6 personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to  
7 the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and  
8 incorporated by reference herein, which, among other things:

- 9 (a) permanently restrains and enjoins Defendant from violation of Section  
10 13(b)(5) of the Securities Exchange Act of 1934 (“Exchange Act”) [15  
11 U.S.C. § 78m(b)(5)] and Rules 13b2-1, and 13b2-2 thereunder [17 C.F.R.  
12 §§ 240.13b2-1, 240.13b2-2], and from aiding and abetting violations of  
13 Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]; and  
14 (b) does not order a civil penalty under Section 21(d)(3) of the Exchange Act  
15 [15 U.S.C. § 78u(d)(3)], based on the penalty of \$40,000 already paid in a  
16 civil enforcement proceeding initiated by the Federal Deposit Insurance  
17 Corporation and based on the Defendant’s cooperation in the Commission  
18 investigation and related enforcement proceeding.

19 3. Defendant acknowledges that the Court is not imposing a civil penalty based in  
20 part on Defendant’s cooperation in a Commission investigation and related enforcement action.  
21 Defendant consents that if at any time following the entry of the Final Judgment the Commission  
22 obtains information indicating that Defendant knowingly provided materially false or misleading  
23 information or materials to the Commission or in a related proceeding, the Commission may, at  
24 its sole discretion and without prior notice to the Defendant, petition the Court for an order  
25 requiring Defendant to pay a civil penalty. In connection with the Commission’s motion for civil  
26 penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from  
27 arguing that he did not violate the federal securities laws as alleged in the Complaint;  
28 (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related

1 Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall  
2 be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised  
3 in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or  
4 investigative testimony, and documentary evidence without regard to the standards for summary  
5 judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these  
6 circumstances, the parties may take discovery, including discovery from appropriate non-parties.

7 4. Defendant waives the entry of findings of fact and conclusions of law pursuant to  
8 Rule 52 of the Federal Rules of Civil Procedure.

9 5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of  
10 the Final Judgment.

11 6. Defendant enters into this Consent voluntarily and represents that no threats,  
12 offers, promises, or inducements of any kind have been made by the Commission or any  
13 member, officer, employee, agent, or representative of the Commission to induce Defendant to  
14 enter into this Consent.

15 7. Defendant agrees that this Consent shall be incorporated into the Final Judgment  
16 with the same force and effect as if fully set forth therein.

17 8. Defendant will not oppose the enforcement of the Final Judgment on the ground,  
18 if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and  
19 hereby waives any objection based thereon.

20 9. Defendant waives service of the Final Judgment and agrees that entry of the Final  
21 Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant  
22 of its terms and conditions. Defendant further agrees to provide counsel for the Commission,  
23 within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit  
24 or declaration stating that Defendant has received and read a copy of the Final Judgment.

25 10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted  
26 against Defendant in this civil proceeding. Defendant acknowledges that no promise or  
27 representation has been made by the Commission or any member, officer, employee, agent, or  
28 representative of the Commission with regard to any criminal liability that may have arisen or

1 may arise from the facts underlying this action or immunity from any such criminal liability.  
2 Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding,  
3 including the imposition of any remedy or civil penalty herein. Defendant further acknowledges  
4 that the Court's entry of a permanent injunction may have collateral consequences under federal  
5 or state law and the rules and regulations of self-regulatory organizations, licensing boards, and  
6 other regulatory organizations. Such collateral consequences include, but are not limited to, a  
7 statutory disqualification with respect to membership or participation in, or association with a  
8 member of, a self-regulatory organization. This statutory disqualification has consequences that  
9 are separate from any sanction imposed in an administrative proceeding. In addition, in any  
10 disciplinary proceeding before the Commission based on the entry of the injunction in this  
11 action, Defendant understands that he shall not be permitted to contest the factual allegations of  
12 the complaint in this action.

13 11. Defendant understands and agrees to comply with the Commission's policy "not  
14 to permit a defendant or respondent to consent to a judgment or order that imposes a sanction  
15 while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In  
16 compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to  
17 be made any public statement denying, directly or indirectly, any allegation in the complaint or  
18 creating the impression that the complaint is without factual basis; and (ii) that upon the filing of  
19 this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they  
20 deny any allegation in the complaint. If Defendant breaches this agreement, the Commission  
21 may petition the Court to vacate the Final Judgment and restore this action to its active docket.  
22 Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take  
23 legal or factual positions in litigation or other legal proceedings in which the Commission is not  
24 a party.

25 12. Defendant hereby waives any rights under the Equal Access to Justice Act, the  
26 Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to  
27 seek from the United States, or any agency, or any official of the United States acting in his or  
28 her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees,

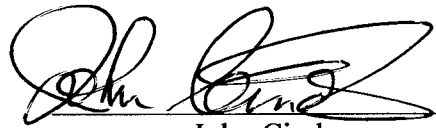
1 expenses, or costs expended by Defendant to defend against this action. For these purposes,  
2 Defendant agrees that Defendant is not the prevailing party in this action since the parties have  
3 reached a good faith settlement.

4 13. In connection with this action and any related judicial or administrative  
5 proceeding or investigation commenced by the Commission or to which the Commission is a  
6 party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and  
7 places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile  
8 transmission of notices or subpoenas issued by the Commission for documents or testimony at  
9 depositions, hearings, or trials, or in connection with any related investigation by Commission  
10 staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices  
11 and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on  
12 service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local  
13 rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging,  
14 and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v)  
15 consents to personal jurisdiction over Defendant in any United States District Court for purposes  
16 of enforcing any such subpoena.

17 14. Defendant agrees that the Commission may present the Final Judgment to the  
18 Court for signature and entry without further notice.

19 15. Defendant agrees that this Court shall retain jurisdiction over this matter for the  
20 purpose of enforcing the terms of the Final Judgment.

21  
22 Dated: 2/21/2012

  
23 John Cinderey

ACKNOWLEDGMENT

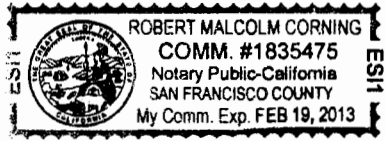
State of California  
County of SAN FRANCISCO

On 02/21/2012 before me, Robert Malcolm Corning, Notary Public personally appeared JOHN CINDEREY, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Robert Malcolm Corning



Approved as to form:

Mary McNamara, Esq.

Mary McNamara, Esq.  
Attorney for Defendant John Cinderey