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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 SECURITIES AND EXCHANGE COMMISSION, Case No. 3:15-cv-03101 CRB (SK)

14 Plaintiff,

15 v.

16 BINGQING YANG,

17 Defendant.
18

~~PROPOSED~~ FINAL JUDGMENT AS TO
DEFENDANT BINGQING YANG

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1 The Securities and Exchange Commission having filed a Complaint and Defendant
2 Bingqing Yang having entered a general appearance; consented to the Court's jurisdiction over
3 Defendant and the subject matter of this action; consented to entry of this Final Judgment without
4 admitting or denying the allegations of the Complaint (except as to jurisdiction and except as
5 otherwise provided herein in paragraph XI); waived findings of fact and conclusions of law; and
6 waived any right to appeal from this Final Judgment:

7 I.

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

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

15 (b) to make any untrue statement of a material fact or to omit to state a material fact
16 necessary in order to make the statements made, in the light of the circumstances
17 under which they were made, not misleading; or

18 (c) to engage in any act, practice, or course of business which operates or would
19 operate as a fraud or deceit upon any person.

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

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26 II.

27 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
28 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the

1 “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or
2 instruments of transportation or communication in interstate commerce or by use of the mails,
3 directly or indirectly:

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

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

15 III.

16 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
17 permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. §
18 77e] by, directly or indirectly, in the absence of any applicable exemption:

- 19 (a) Unless a registration statement is in effect as to a security, making use of any means
20 or instruments of transportation or communication in interstate commerce or of the
21 mails to sell such security through the use or medium of any prospectus or
22 otherwise;
- 23 (b) Unless a registration statement is in effect as to a security, carrying or causing to be
24 carried through the mails or in interstate commerce, by any means or instruments of
25 transportation, any such security for the purpose of sale or for delivery after sale; or
- 26 (c) Making use of any means or instruments of transportation or communication in
27 interstate commerce or of the mails to offer to sell or offer to buy through the use or
28 medium of any prospectus or otherwise any security, unless a registration statement

1 has been filed with the Commission as to such security, or while the registration
2 statement is the subject of a refusal order or stop order or (prior to the effective date
3 of the registration statement) any public proceeding or examination under Section 8
4 of the Securities Act [15 U.S.C. § 77h].

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

10 IV.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently
12 restrained and enjoined from, violating Sections 206(1), (2) and (4) of the Investment Advisers Act of
13 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2) & (4)], and Rule 206(4)-8 thereunder [17 C.F.R.
14 275.206(4)-8], by, directly or indirectly, by the use of any means or instrumentality of interstate
15 commerce:

- 16 (a) employing any device, scheme, or artifice to defraud any client or prospective client;
17 (b) engaging in any transaction, practice or course of business which operates as a fraud
18 or deceit upon any client or prospective client;
19 (c) engaging in any act, practice, or course of business which is fraudulent, deceptive, or
20 manipulative; or
21 (d) while acting as an investment adviser to a pooled investment vehicle:
22 1. making any untrue statement of a material fact or omitting to state a material
23 fact necessary to make the statements made, in the light of the circumstances
24 under which they were made, not misleading, to any investor or prospective
25 investor in the pooled investment vehicle; or
26 2. otherwise engaging in any act, practice, or course of business that is fraudulent,
27 deceptive, or manipulative with respect to any investor or prospective investor
28 in the pooled investment vehicle.

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

6 V.

7 IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from
8 directly or indirectly participating in the issuance, offer, or sale of any security of any entity
9 controlled by her, or of any entity over which she exercises joint control.

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

15 VI.

16 IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from
17 directly or indirectly soliciting any person or entity to purchase or sell any security.

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

23 VII.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section
25 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15
26 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer that has a
27 class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or that is
28 required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$209,672 representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$64,579 for a total of \$274,251, and a civil penalty in the amount of \$425,749 pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Defendant shall satisfy this obligation by paying this amount pursuant to the terms of the payment schedule set forth in paragraph IX below 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; Bingqing Yang 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 using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment.

1 The Commission may enforce the Court’s judgment for penalties by the use of all
2 collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28
3 U.S.C. § 3001 et seq., and moving for civil contempt for the violation of any Court orders issued in
4 this action. Defendant shall pay post judgment interest on any amounts due after 30 days of the
5 entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds,
6 together with any interest and income earned thereon (collectively, the “Fund”), pending further
7 order of the Court.

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

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

Bingqing Yang shall pay the total of disgorgement, prejudgment interest, and penalty due of \$700,000 in two installments to the Commission according to the following schedule: (1) \$150,000, within 30 days of entry of this Final Judgment; (2) \$550,000 within 360 days of entry of this Final Judgment. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 30 days of the entry of Final Judgment. Prior to making the final payment set forth herein, Bingqing Yang shall contact the staff of the Commission for the amount due for the final payment.

If Bingqing Yang fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Court.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

XI.


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).

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XII.

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: June 9, 2021, _____


UNITED STATES DISTRICT JUDGE
CHARLES R. BRYER

1 ERIN E. SCHNEIDER (CA Bar No. 216114)
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2 SHEILA E. O'CALLAGHAN (CA Bar No. 131032)
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8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 SECURITIES AND EXCHANGE COMMISSION,
14 Plaintiff,
15 v.
16 BINGQING YANG;
17 Defendant.
18

Case No. 3:15-cv-03101 CRB (SK)

**DEFENDANT BINQING YANG'S
CONSENT TO ENTRY OF FINAL
JUDGMENT**

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1 1. Defendant Bingqing Yang (“Defendant”) acknowledges having been served with the
2 complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over
3 Defendant and over the subject matter of this action.

4 2. Without admitting or denying the allegations of the Complaint (except as provided
5 herein in paragraph 13 and except as to personal and subject matter jurisdiction, which Defendant
6 admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the
7 “Final Judgment”) and incorporated by reference herein, which, among other things:

8 (a) permanently restrains and enjoins Defendant from violations of Section 10(b) of
9 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and
10 Rule 10b-5 thereunder, 17 C.F.R. §§ 240.10b-5; Section 17(a) of the Securities Act
11 of 1933 (“Securities Act”), 15U.S.C. § 77q(a); Sections 5(a) and (c) of the
12 Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); Sections 206(1), 206(2) and 206(4)
13 of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. § 80b-6(1),
14 80b-6(2) and 80b-6(4) and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8;

15 (b) permanently restrains and enjoins Defendant from directly or indirectly: (1)
16 participating in the issuance, offer or sale of any security of any entity controlled
17 by her, or of any entity over which she exercises joint control; and (2) soliciting
18 any person or entity to purchase or sell any security;

19 (c) prohibits Defendant, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C.
20 § 78u(d)(2), and Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), from acting
21 as an officer or director of any issuer that has a class of securities registered
22 pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to
23 file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78(o)(d).

24 (d) orders Defendant to pay disgorgement in the amount of \$209,672, plus
25 prejudgment interest thereon in the amount of \$64,579, for a total of \$274,251; and

26 (e) orders Defendant to pay a civil penalty in the amount of \$425,749 pursuant to
27 Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.
28

1 3. Defendant acknowledges that the civil penalty paid pursuant to the Final Judgment
2 may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act
3 of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be
4 treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve
5 the deterrent effect of the civil penalty, Defendant agrees that she shall not, after offset or reduction
6 of any award of compensatory damages in any Related Investor Action based on Defendant's
7 payment of disgorgement in this action, argue that she is entitled to, nor shall she further benefit by,
8 offset or reduction of such compensatory damages award by the amount of any part of Defendant's
9 payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor
10 Action grants such a Penalty Offset, Defendant agrees that she shall, within 30 days after entry of a
11 final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the
12 amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission
13 directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to
14 change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a
15 "Related Investor Action" means a private damages action brought against Defendant by or on behalf
16 of one or more investors based on substantially the same facts as alleged in the Complaint in this
17 action.

18 5. Defendant agrees that she shall not seek or accept, directly or indirectly,
19 reimbursement or indemnification from any source, including but not limited to payment made
20 pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays
21 pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are
22 added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees
23 that she shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal,
24 state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment,
25 regardless of whether such penalty amounts or any part thereof are added to a distribution fund or
26 otherwise used for the benefit of investors.

27 6. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule
28 52 of the Federal Rules of Civil Procedure.

1 7. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the
2 Final Judgment.

3 8. Defendant enters into this Consent voluntarily and represent that no threats, offers,
4 promises, or inducements of any kind have been made by the Commission or any member, officer,
5 employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

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

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

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

16 12. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted
17 against Defendant in this civil proceeding. Defendant acknowledges that no promise or
18 representation has been made by the Commission or any member, officer, employee, agent, or
19 representative of the Commission with regard to any criminal liability that may have arisen or may
20 arise from the facts underlying this action or immunity from any such criminal liability. Defendant
21 waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the
22 imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's
23 entry of a permanent injunction may have collateral consequences under federal or state law and the
24 rules and regulations of self-regulatory organizations, licensing boards, and other regulatory
25 organizations. Such collateral consequences include, but are not limited to, a statutory
26 disqualification with respect to membership or participation in, or association with a member of, a
27 self-regulatory organization. This statutory disqualification has consequences that are separate from
28 any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding

1 before the Commission based on the entry of the injunction in this action, Defendant understands that
2 she shall not be permitted to contest the factual allegations of the complaint in this action.

3 13. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e),
4 which provides in part that it is the Commission's policy "not to permit a defendant or respondent to
5 consent to a judgment or order that imposes a sanction while denying the allegations in the complaint
6 or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the
7 defendant or respondent states that he neither admits nor denies the allegations." As part of
8 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take
9 any action or make or permit to be made any public statement denying, directly or indirectly, any
10 allegation in the complaint or creating the impression that the complaint is without factual basis; (ii)
11 will not make or permit to be made any public statement to the effect that Defendant does not admit
12 the allegations of the complaint, or that this Consent contains no admission of the allegations, without
13 also stating that Defendants do not deny the allegations; (iii) upon the filing of this Consent,
14 Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation
15 in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section
16 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the complaint are true, and
17 further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by
18 Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement
19 agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the
20 federal securities laws or any regulation or order issued under such laws, as set forth in Section
21 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19). If Defendant breaches this agreement,
22 the Commission may petition the Court to vacate the Final Judgment and restore this action to its
23 active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right
24 to take legal or factual positions in litigation or other legal proceedings in which the Commission is
25 not a party.

26 14. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small
27 Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from
28 the United States, or any agency, or any official of the United States acting in his or her official

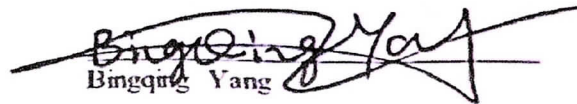
1 capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs
2 expended by Defendant to defend against this action. For these purposes, Defendant agrees that
3 Defendant is not the prevailing party in this action since the parties have reached a good faith
4 settlement.

5 15. Defendant agrees that the Commission may present the Final Judgment to the Court
6 for signature and entry without further notice.

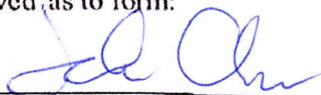
7 17. Defendant agrees that this Court shall retain jurisdiction over this matter for the
8 purpose of enforcing the terms of the Final Judgment.

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Dated: 4/16/2021


Bingqing Yang

Approved, as to form:



John Chu
Corporate Counsel Law Group, LLP
25 Kearney Street, Suite 302
San Francisco, CA 94108-5515
415-989-5300
Attorney for Defendant