

Rafferty

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GALLEON MANAGEMENT, LP,
RAJ RAJARATNAM,
RAJIV GOEL,
ANIL KUMAR,
DANIELLE CHIESI,
MARK KURLAND,
ROBERT MOFFAT,
NEW CASTLE FUNDS LLC,
ROOMY KHAN,
DEEP SHAH,
ALI HARIRI,
ZVI GOFFER,
DAVID PLATE,
GAUTHAM SHANKAR,
SCHOTTENFELD GROUP LLC,
STEVEN FORTUNA,
and
S2 CAPITAL MANAGEMENT, LP,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5-17-10

09 Civ. 8811 (JSR)

ECF CASE

AND JUDGMENT
CONSENT ORDER AS TO DEFENDANT ANIL KUMAR

The Securities and Exchange Commission having filed a Second Amended Complaint ("Complaint") and Defendant Anil Kumar ("Defendant") having entered a general appearance; agreed that the Court has jurisdiction over Defendant and the subject matter of this action; consented to entry of this Consent Order; waived findings of fact and conclusions of law; and waived any right to appeal from this Consent Order:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Consent Order by personal service or otherwise are 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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Consent Order by personal service or otherwise are 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.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for \$2,600,000, representing profits gained and/or losses avoided as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$190,621. In the event that an order of criminal forfeiture is entered against Defendant in the criminal case before the United States District Court of the Southern District of New York titled, United States v. Anil Kumar, 10-CR-00013, then Defendant's monetary obligations, including all outstanding

pre and post judgment interest, will be credited dollar for dollar by the amount of the criminal forfeiture order. The monetary obligations ordered by this Consent Order shall become due thirty (30) days after entry of the Judgment of Conviction in the criminal case, or two (2) years from the date of the entry of this Consent Order, whichever comes first. Defendant shall pay the monetary obligations ordered by this Consent Order (minus any amount ordered in criminal forfeiture) by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Defendant's name as defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Consent Order. A copy of the letter shall be sent to counsel of record for the Commission in this action. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury. Defendant shall provide counsel of record for the Commission with a copy of the Judgment of Conviction in the criminal action within five (5) days of its entry.

IV.

 The Court shall determine ^{no later than November, 2011} whether it is appropriate to order a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21A and/or 21(d)(3) of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1] and, if so, the amount of the penalty. In connection with such a determination: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not

challenge the validity of the Consent or this Consent Order; (c) solely for the purposes of such a determination, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with such a determination, the parties may take discovery, including discovery from appropriate non-parties, but only as expressly approved by the Court.

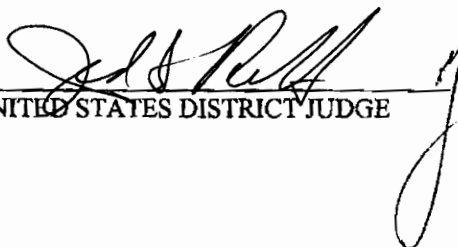
V.

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.

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 Consent Order.

Dated: 5/17/10


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GALLEON MANAGEMENT, LP,
RAJ RAJARATNAM,
RAJIV GOEL,
ANIL KUMAR,
DANIELLE CHIESI,
MARK KURLAND,
ROBERT MOFFAT,
NEW CASTLE FUNDS LLC,
ROOMY KHAN,
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DAVID PLATE,
GAUTHAM SHANKAR,
SCHOTTENFELD GROUP LLC,
STEVEN FORTUNA,
and
S2 CAPITAL MANAGEMENT, LP,

Defendants.

09 Civ. 8811 (JSR)

ECF CASE

CONSENT OF DEFENDANT ANIL KUMAR

1. Defendant Anil Kumar ("Defendant") acknowledges having been served with the Second Amended Complaint ("Complaint") in this action and enters a general appearance.
2. Defendant agrees the Court has jurisdiction over Defendant and over the subject matter of this action.
3. Defendant hereby consents to the entry of the Consent Order in the form attached hereto (the "Consent Order") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violations of Section 17(a) of the Securities Act of 1933 (the "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 promulgated thereunder [17 C.F.R. § 240.10b-5]; and
- (b) orders Defendant to pay disgorgement in the amount of \$2,600,000, plus prejudgment interest in the amount of \$190,621, for a total of \$2,790,621, but provides that in the event that an order of criminal forfeiture is entered against Defendant in the criminal case before the United States District Court of the Southern District of New York titled, United States v. Anil Kumar, 10-CR-00013, then Defendant's disgorgement obligations, including all outstanding pre and post judgment interest, will be credited dollar for dollar by the amount of the criminal forfeiture order.

4. Defendant agrees that the Court shall order disgorgement of ill-gotten gains and prejudgment interest thereon. Defendant further agrees that the Court shall determine whether a civil penalty pursuant to Section 21(d)(3) and Section 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1], and Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] is appropriate and, if so, the amount of the penalty. Defendant further agrees that in connection with any such determination on civil penalties: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Consent Order; (c) solely for the purposes of such a determination, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues on the basis of affidavits, declarations,

excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with such a determination, the parties may take discovery, including discovery from appropriate non-parties.

5. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to a judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to a judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. This paragraph does not apply to any disgorgement amounts that Defendant pays.

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

7. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Consent Order.

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

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

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

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

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

are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

13. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Consent Order and restore this action to its active docket. Nothing in this Consent affects Defendant's: (i) testimonial obligations; (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party; or (iii) right to assert his Fifth Amendment rights in this and in related proceedings.

14. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

15. Defendant agrees to cooperate with the Commission in connection with this action and any related investigation by the Commission staff. The Commission shall not require cooperation from Defendant that is inconsistent with his obligations under existing agreements he has entered into with other Government agencies.

16. Defendant agrees that the Commission may present the Consent Order to the Court for signature and entry without further notice.

17. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Consent Order.

Dated: APRIL 27, 2010

Anil Kumar
Anil Kumar

On April 27, 2010, Anil Kumar, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Susan Robledo,
Notary Public

Susan Robledo
Notary Public

Commission expires: September 15, 2012

Approved as to form:

Robert G. Morvillo

Robert Morvillo, Esq.
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