

Citation: 2024 BCSECCOM 408

## **Settlement Agreement**

**Aaron Keay**

***Securities Act, RSBC 1996, c. 418***

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Aaron Keay (Keay) agree as follows:

### **Agreed Statement of Facts**

#### ***Background***

1. Keay is a resident of Vancouver, British Columbia who, during the relevant period, was in a special relationship with a BC company (the Issuer) whose shares traded on the TSX Venture Exchange (TSX-V) subsequent to a reverse-takeover transaction (the Transaction).
2. Keay had knowledge of the Transaction prior to it being publicly disclosed (the Undisclosed Material Information).
3. Keay was not a director or officer of the Issuer and he does not have a prior history of any regulatory misconduct.

#### ***Misconduct***

4. In May 2022, prior to the announcement of the Transaction, and with knowledge of the Undisclosed Material Information, Keay directed the purchase of shares of the Issuer in accounts held by two close relatives. The combined acquisition cost of the shares was approximately \$134,000 (the May Shares).
5. By directing the purchase of the May Shares, Keay contravened section 57.2(2) of the Act.
6. On May 20, 2022, the TSX-V halted the Issuer's shares pending the announcement of the Transaction.
7. In February 2023, the Transaction was approved by the TSX-V and trading resumed. At that time, the May Shares could have been sold for a profit of approximately \$200,000 to \$225,000.

8. In October 2022, a Senior Listing Manager with the TSX-V sent Keay an email. The email asked Keay to advise whether he, or any associates, affiliates or persons related to him or his company traded in shares of the Issuer in May of 2022. Keay responded by email later that day and stated that he was not aware of “anyone related, associated, friends, affiliates, etc etc or myself trading in Kona Bay at anytime ever, including” in May of 2022.
9. Keay’s response to the TSX-V was not true and therefore constituted conduct contrary to the public interest.

#### ***Factors Relevant to Settlement***

10. Prior to the Issuer receiving final approval from the TSX-V for listing on its exchange, Keay agreed that all his shares acquired prior to the announcement of the Transaction, including the May Shares, were subject to escrow provisions prescribed by the TSX-V which prohibited their sale.
11. Keay has not disposed of any shares, including the May Shares, into the public market.

#### ***Mitigating Factors***

12. It is a significant mitigating factor that Keay voluntarily approached the Executive Director about settlement and entered into this Settlement Agreement prior to the issuance of a Notice of Hearing, which has resulted in savings of time and costs.
13. Keay has expressed remorse for his conduct.

#### **Public Interest**

14. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

#### **Undertaking(s)**

15. Keay undertakes to pay \$337,500 to the Commission in respect of settlement of this matter which sum is due and payable immediately without further demand. This amount represents the profits Keay could have made if he sold the shares in February 2023, plus approximately an additional fifty percent.

### **Order**

- ¶ 2 The Executive Director will issue an order (the Order) that:
1. under section 161(1)(d)(ii) and (iv), Keay is prohibited for a period of **one year** from becoming or acting as a director or officer of any issuer or registrant except an issuer in which he owns all of the issued and outstanding shares, or from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets, except that he may continue in his current role as a consultant to Yerbae Brands Corp.
  2. under section 161(1)(b)(ii), Keay is prohibited for a period of **three years** from trading in or purchasing any securities or derivatives, except that he may trade in his own account and in the account of an issuer in which he owns all of the issued and outstanding shares, with a person registered to trade in securities under the Act, if he has first provided the registered person with a copy of the Order before any trades take place.
  3. under section 161(1)(b)(ii), Keay is prohibited for a period of **three years** from trading in or purchasing any securities of an issuer with whom he is in a special relationship except that Keay, or an issuer in which he owns all of the issued and outstanding shares, may sell securities of Yerbae Brands Corp. beneficially owned by them as of the date of this Order, and may acquire securities of an issuer with whom they are in a special relationship in consideration for services rendered or for assets they transfer or assign to the issuer, in an account with a person registered under the Act and with notice of this Order.

### **Consent to Regulatory Orders**

- ¶ 3 Keay consents to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out in paragraphs 2 above.

### **Waiver**

- ¶ 4 Keay waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

**Counterpart**

¶ 5 This Settlement Agreement may be signed in counterpart and all such counterparts of signed copies, whether delivered electronically or otherwise, shall be read or construed together as if they formed one originally executed document.

¶ 6 September 25, 2024

¶ 7 Aaron Keay  
Aaron Keay

Redacted)  
Witness Signature )  
Redacted)  
Witness Name (please print) )  
Redacted)  
Redacted)  
Address )  
Redacted)  
Occupation )

*Peter J Brady*  
9/26/2024 | 1:21 PM PDT

¶ 8 Peter J. Brady  
Executive Director