

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101162 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22178

In the Matter of

David L. Kanen,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against David L. Kanen (“Kanen” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person who directly or indirectly acquires beneficial ownership of more than 5% of a registered class of equity security to file a statement with the Commission disclosing certain information and to file certain updating amendments. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.
3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.
4. While subject to these reporting requirements, Respondent violated Section 13(d) by failing to timely file initial statements and/or required amendments with respect to Respondent's beneficial ownership of the registered classes of common stock of BBQ Holdings Inc. ("BBQ"), CarParts.com, Inc. ("CarParts"), and Lazydays Holdings, Inc. ("Lazydays"), and violated Section 16(a) by failing to timely file multiple required reports of holdings and/or transactions in BBQ's, CarParts' and Lazydays' securities.

Respondent

5. Kanen, age 58, is the principal owner and managing member of Kanen Wealth Management, LLC ("Kanen Wealth Management"), an investment adviser he founded in 2016. Kanen Wealth Management has been a registered investment adviser with the Commission since

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

July 2019, and with the state of Florida since 2016. Kanen was subject to Section 13(d) as a greater than 5% beneficial owner of BBQ's common stock between February 2018 and August 2022, and was subject to Section 16(a) as a greater than 10% beneficial owner between May 2018 and August 2022 and additionally as a director of BBQ from October 2018 to May 2021. Kanen was subject to Section 13(d) as a greater than 5% beneficial owner of CarParts' common stock between October 2018 and December 2023, and was subject to Section 16(a) as a greater than 10% beneficial owner between November 2018 and July 2020 and additionally as a director of CarParts from January 2019 to June 2020. Kanen was subject to Section 13(d) as a greater than 5% beneficial owner of Lazydays' common stock between July 2020 and March 2023, and was subject to Section 16(a) as a greater than 10% beneficial owner between October 2022 and December 2022. Kanen had beneficial ownership under the standards of Rule 13d-3 of securities held in accounts for which he had sole investment and voting power, accounts of individual clients of Kanen Wealth Management managed on a discretionary basis, and accounts of certain affiliated funds for which Kanen Wealth Management serves as the investment adviser. Kanen is a resident of Parkland, Florida.

Issuers

6. BBQ (f/k/a Famous Daves of America Inc.) is a Minnesota corporation with its principal place of business in Minnesota. BBQ's common stock was registered with the Commission under Section 12 of the Exchange Act and traded on the Nasdaq Stock Market (ticker: BBQ) until September 2022. In September 2022, BBQ completed a previously announced transaction to be acquired and its stock ceased being publicly traded and registered with the Commission shortly thereafter.

7. CarParts (f/k/a U.S. Auto Parts Network, Inc.) is a Delaware corporation with its principal place of business in California. CarParts' common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the Nasdaq Stock Market (ticker: PRTS).

8. Lazydays is a Delaware corporation with its principal place of business in Florida. Lazydays' common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the Nasdaq Stock Market (ticker: LAZY).

Applicable Legal Framework

9. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) together require any person, including a group, who has acquired beneficial ownership of more than 5% of a class of equity security registered under Section 12 of the Exchange Act to publicly file a Schedule 13D disclosure statement with the Commission, which includes, among other things, the identity of the beneficial owner, the amount of beneficial ownership, and plans or proposals regarding the issuer. During the

time period herein, Rule 13d-1(a) required the Schedule 13D to be filed, within 10 days² after the triggering acquisition.

10. During the time period herein, Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder required a filer to amend a Schedule 13D promptly³ as material changes occur in disclosures previously made, including but not limited to, any material increase or decrease in the percentage of the class beneficially owned. An acquisition or disposition of beneficial ownership of securities in an amount equal to 1% or more of the class of securities is deemed material for purposes of Rule 13d-2. Under the standard applicable during the time period herein, any delay in filing beyond the date the filing reasonably can be made may not be prompt.⁴

11. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. During the time period herein, Rule 13d-1(c) provided that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days⁵ after the triggering acquisition if the person “has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect,” and is not directly or indirectly the beneficial owner of 20% or more of the class of securities (a “Passive Investor 13G Filer”). Under Rule 13d-1(e), if a Passive Investor 13G Filer subsequently acquires or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, the person immediately becomes subject to Rule 13d-1(a), and during the time period herein, was required to file a Schedule 13D within 10 days⁶ and is prohibited from voting or acquiring additional beneficial ownership interest in securities of the class until 10 days after the Schedule 13D is filed.

² On October 10, 2023, the Commission adopted amendments to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) to update and shorten certain filing deadlines (the “2023 Amendments”). Modernization of Beneficial Ownership Reporting, SEC Release No. 34-98704 (Oct. 10, 2023), 88 Fed. Reg. 76896 (Nov. 7, 2023). Among other provisions, the 2023 Amendments shortened the deadline for filing the initial statement on Schedule 13D from 10 days to 5 business days. Id. at 76897, 76906. Compliance with this new deadline is required as of February 5, 2024. See id. at 76942.

³ The 2023 Amendments created a bright-line rule that replaces “promptly” with a two-business day requirement. Id. at 76897, 76921. Compliance is required as of February 5, 2024. See id. at 76942.

⁴ Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), 63 Fed. Reg. 2854, 2855 n.14 (Jan. 16, 1998).

⁵ The 2023 Amendments shortened this filing deadline to five business days. See SEC Release No. 34-98704, 88 Fed. Reg. at 76897, 76916. Compliance with this new deadline is required by September 30, 2024. See id. at 76942.

⁶ The 2023 Amendments shortened this filing deadline to five business days. See id. at 76897, 76906. Compliance with this new deadline is required by September 30, 2024. See id. at 76942.

12. During the time period herein, a Passive Investor 13G Filer was required, under Exchange Act Rule 13d-2(b), to file an annual amendment within 45 days after the end of each calendar year if there were any changes in the information previously reported, unless certain limited exceptions applied.⁷ In addition, during the time period herein, a Passive Investor 13G Filer was also required, under Exchange Act Rule 13d-2(d), to amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and to amend the Schedule 13G promptly thereafter upon increasing or decreasing its beneficial ownership by more than 5% of the class.⁸

13. Under Section 13(d) of the Exchange Act and the application of Rule 13d-3, a beneficial owner of a security includes “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to such security. More than one person may be a beneficial owner of the same securities.

14. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.⁹

15. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report

⁷ The 2023 Amendments replaced this requirement with a requirement to file an amendment within 45 days after the end of a calendar quarter in which a material change occurred to the information previously set forth. See id. at 76898, 76921. Compliance with this new requirement is required beginning September 30, 2024. See id. at 76942.

⁸ The 2023 Amendments replaced “promptly” with a two-business day requirement. See id. at 76898, 76924. Compliance is required as of September 30, 2024. See id. at 76942.

⁹ A limited exception under Rule 16a-1(a)(1) applies to certain specified types of institutional investors, such as registered investment advisers and broker-dealers, that permit such institutions to exclude any shares “held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business” if “such shares are acquired ... without the purpose or effect of changing or influencing control of the issuer or engaging in any arrangement subject to Rule 13d-3(b)” (a “Qualified Institution”). A parent holding company or control person of a Qualified Institution may also exclude such shares if the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries and affiliates that are not Qualified Institutions, does not exceed 1% of the class of securities. Rule 16a-1(a)(1)(vii).

disclosing all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 report within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

16. There is no state of mind requirement for violations of Section 16(a) and 13(d) and the rules thereunder.¹⁰ The failure to timely file a required report, even if inadvertent, constitutes a violation.¹¹

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis¹²

17. Respondent was subject to Exchange Act Section 16(a) as a greater than 10% beneficial owner of BBQ's common stock from May 2018 to August 2022, and as a director of BBQ from October 2018 to May 2021. Respondent was also subject to Section 16(a) as a greater than 10% beneficial owner of CarParts from November 2018 to July 2020, and as a director of

¹⁰ See, e.g., SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct"); SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act).

¹¹ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *2 (May 19, 1980) (Commission opinion) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"); see generally Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) ("evidence of both motive for non-disclosure and actual market impact ... is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25792 (May 13, 2003) (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added).

¹² At the relevant times discussed herein with respect to BBQ, CarParts, and Lazydays, Respondent was not eligible under Exchange Act Rule 16a-1(a)(1)(vii) to exclude any securities over which he was deemed to have direct or indirect beneficial ownership under Section 13(d) and the rules thereunder. For purposes of reporting holdings and transactions under Section 16(a), at all relevant times, Respondent had an obligation to report such securities to the extent of his direct or indirect pecuniary interest therein, which included a direct or indirect pecuniary interest in the securities held in his own accounts and the accounts of immediate family members sharing the same household and an indirect pecuniary interest in the securities held by an affiliated private fund.

CarParts from January 2019 to June 2020. Respondent timely filed initial statements of beneficial ownership on Forms 3 as to BBQ on May 14, 2018, and as to CarParts on December 7, 2018.

18. Subsequently, Respondent failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Issuer</u>	<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
BBQ	4	5/15/2018	5/17/2018	5/25/2018
BBQ	4	5/23/2018	5/25/2018	9/27/2018
BBQ	4	6/21/2018	6/25/2018	9/27/2018
BBQ	4	8/16/2018	8/20/2018	9/27/2018
BBQ	4	8/27/2018	8/29/2018	9/27/2018
BBQ	4	8/29/2018	8/31/2018	9/27/2018
BBQ	4	9/19/2018	9/21/2018	9/27/1028
BBQ	4	9/20/2018	9/24/2018	9/27/2018
BBQ	4	9/21/2018	9/25/2018	9/27/2018
CarParts	4	11/30/2018	12/4/2018	12/7/2018
BBQ	5	12/3/2018	12/5/2018	2/14/2019
CarParts	4	6/16/2020	6/18/2020	6/19/2020

19. Respondent's late-reported transactions in BBQ and CarParts primarily involved open-market purchases of common stock. None of Respondent's reportable purchases of BBQ stock between May 23, 2018 and September 21, 2018 were reported on Form 4 until September 27, 2018, and these purchases totaled over \$1 million.

20. Respondent also failed to timely file an initial statement of beneficial ownership on Form 3 within 10 days after becoming a greater than 10% beneficial owner of Lazydays as of October 25, 2022. Respondent did not file the Form 3 until January 17, 2023, almost three months later.

21. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Schedule 13D Amendments and Comply with Requirements

22. Respondent became subject to the reporting requirements of Exchange Act Section 13(d) after acquiring beneficial ownership of more than 5% of BBQ's common stock as of February 5, 2018. Respondent filed an initial statement on Schedule 13G on February 14, 2018 intended as a Passive Investor 13G Filer filing. By no later than August 26, 2018, Respondent no longer held the securities without a purpose or effect of changing or influencing control of the issuer. While Respondent filed an initial Schedule 13D statement on September 5, 2018, reporting that Respondent had "recently had discussions with the Issuer regarding Board representation and intend[ed] to continue such discussions," Respondent was prohibited under Rule 13d-1(e)(2)(ii) from acquiring an additional beneficial ownership interest in any equity securities of BBQ from the time he held the securities with a purpose or effect of changing or influencing control of the issuer, until the expiration of the tenth day from the date of the filing of the Schedule 13D. In contravention of this prohibition, Respondent acquired beneficial ownership of additional shares of BBQ common stock on August 27, 2018, August 28, 2018, August 29, 2018, and September 4, 2018.

23. Respondent also failed to timely file amendments required as a result of material changes to the information set forth previously on Schedule 13D as to BBQ, including:

- Respondent's acquisitions of beneficial ownership of BBQ's shares constituting more than 1% of the class of outstanding BBQ common stock between at least September 17, 2018 and September 20, 2018, which was not reflected in an amendment until January 17, 2019; and
- Respondent's appointment as a director of BBQ effective October 4, 2018, which was not reported in an amendment until January 17, 2019.

24. In addition, Respondent failed to timely file multiple Schedule 13D amendments as required with respect to CarParts and Lazydays after having filed initial Schedule 13D statements for each issuer.

25. After Respondent filed an initial Schedule 13D statement with respect to CarParts on October 23, 2018, Respondent failed to timely file amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- Respondent entering into a Board Candidate Agreement dated January 18, 2019, pursuant to which Respondent was appointed to CarParts' board of directors as of that date, which was not reflected in an amendment until June 19, 2020, which amendment was to report his resignation as a director;

- Respondent's dispositions of beneficial ownership of CarParts' shares constituting more than 1% of the class of outstanding CarParts common stock by at least April 4, 2019, which was not reflected in an amendment until November 12, 2019; and
- Respondent's acquisitions of beneficial ownership of CarParts' shares constituting more than 1% of the class of outstanding CarParts common stock between August 22, 2019 and September 6, 2019, which was not reflected in an amendment until November 12, 2019.

26. After filing an initial Schedule 13D statement as to Lazydays on November 30, 2021, Respondent failed to timely file amendments required as a result of material changes to the information set forth previously on Schedule 13D, including:

- Respondent's acquisitions of beneficial ownership of Lazydays shares constituting more than 1% of the class of outstanding Lazydays common stock by at least October 25, 2022, which was not reflected in an amendment until February 3, 2023; and
- Respondent's dispositions of beneficial ownership of Lazydays shares constituting more than 1% of the class of outstanding Lazydays common stock between October 31, 2022 and December 5, 2022, which was not reflected in an amendment until February 3, 2023.

27. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder.

Respondent's Remedial Efforts

28. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$109,000 to the Securities and Exchange Commission, for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If

timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying David L. Kanen as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

Amounts ordered to be paid as civil money penalties pursuant to this Order 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, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he 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 Securities and Exchange Commission. 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 proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and

admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order,

consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent 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).

By the Commission.

Vanessa A. Countryman
Secretary