UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ALTERNATE ENERGY HOLDINGS, INC., DONALD L. GILLISPIE, and JENNIFER RANSOM,

Defendants,

and

BOSCO FINANCIAL, LLC, ENERGY EXECUTIVE CONSULTING, LLC, and BLACK & LOBELLO LLC,

Relief Defendants.

Case No. 1:10-cv-621-EJL-REB

ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR FINAL JUDGMENT AS TO DEFENDANTS ALTERNATE ENERGY HOLDINGS, INC. AND DONALD L. GILLISPIE

INTRODUCTION

Before the Court in the above entitled matter is the Securities and Exchange Commission's (the "SEC") Motion for the entry of Final Judgment as to Defendant Alternate Energy Holdings, Inc. ("AEHI") and Defendant Donald L. Gillispie. (Dkt. 298.) The SEC's Motion is based on the supporting materials filed therewith and the Court's prior order granting summary judgment as to the SEC's First, Second, and Sixth claims for relief. (Dkt. 281.) The Defendant AEHI has filed an opposition to the Motion. (Dkt.

308.) The SEC has filed a reply and AEHI was allowed to file a sur-reply. (Dkt. 314, 322.) Defendant Gillispie has not responded to the Motion but did file Motions to Stay which he has since withdrawn. (Dkt. 305, 313, 320.)[1] The matter is now ripe for the Court's consideration. As such, the Court has reviewed the materials filed in relation to the Motion as well as the entire record herein and finds as follows.

DISCUSSION

1. Permanent Injunction

To obtain a permanent injunction, the SEC bears the burden of showing there is "a reasonable likelihood of future violations of the securities laws." *SEC v. M & A West, Inc.*, 538 F.3d 1043, 1055 (9th Cir. 2008) (quoting *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980)). The Court evaluates the likelihood of future violations based on (1) past violations, (2) the degree of scienter involved, (3) whether the present violation was isolated or recurrent, (4) whether the defendant recognizes the wrongful nature of his conduct, (5) "the likelihood, because of defendant's professional occupation, that future violations might occur," and (6) "the sincerity of his assurances against future violations." *Murphy*, 626 F.2d at 655. The inquiry is based on "the totality of the circumstances surrounding the defendant and his violations." *Id.*

The SEC argues a permanent injunction is needed in this case because the Defendant Gillispie's actions suggests a repeated pattern of illegal and fraudulent conduct

[1] Mr. Gillispie filed two Motions to Stay asking that the Court delay ruling on the SEC's Motion for Final Judgment until after the related criminal case against him has been completed. (Dkt. 305, 313.) In his Revised Motion to Stay, Mr. Gillispie also requests "consideration to not have the same judge in both" his criminal case and this civil case. (Dkt. 313.) The SEC opposed the requested stay. (Dkt. 312.) Thereafter, Mr. Gillispie submitted a document stating that he was withdrawing his motion to stay the civil case. (Dkt. 320.) Based on that filing, the two Motions to Stay are hereby withdrawn *in toto*.

carried out with a high degree of scienter. (Dkt. 299 at 4.) Additionally, the SEC argues Defendant Gillispie has attempted to shift blame and deny any wrongdoing, not taken any efforts to mitigate harm from his past conduct, and has continued to influence the company even after resigning from the board. (Dkt. 299 at 6.) AEHI does not object to entry of the injunction enjoining it from any further violation of the securities laws. (Dkt. 308 at 6.) AEHI does note, however, that it currently has no funds with which to make its SEC filings. (Dkt. 308 at 6-7.)

In the Court's Order granting summary judgment, the Court concluded that Defendants AEHI and Gillispie violated Sections 5(a) and (c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) & 77e(c), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5(b), and Section 17(a)(2) of the Securities Act, 15 U.S.C. §§ 77q(a) & 78j(b); 17 C.F.R. § 240.10b-5(b). (Dkt. 281.) In addition, the Court granted the SEC's request to freeze some $2 million dollars that the Defendants transferred to a third party and which are subject to this enforcement action. (Dkt. 281.) The Court incorporates its findings from that Order herein and agrees that a permanent injunction is appropriate in this case as the Defendants are likely to commit future securities law violations.

The Defendants' violations of the securities laws included repeated and multiple acts spanning several years. Their activities included providing false, misleading, and inaccurate material information in several public announcements issued in connection to securities offerings. (Dkt. 281.) These violations occurred with the requisite level of scienter. Further, the Defendants were evasive in their conduct even after this action was

filed showing little sincerity or recognition for the wrongfulness of the conduct. Based on the factors noted above, the Court finds there is a reasonable likelihood of future violations of the securities laws by the Defendants. Further, there is no objection to the entry of the injunction by the Defendants. Accordingly, the Court will grant the requested permanent injunction.

2. Disgorgement

The SEC also asks that the Court order the equitable remedy of disgorgement against the Defendants. (Dkt. 299 at 11.) District courts have "broad equity powers to order the disgorgement of ill-gotten gains obtained through the violation of the securities laws. Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable." *See SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010) (quoting *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 (9th Cir. 1998)); *see also SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1113 (9th Cir. 2006). The calculation of disgorgement amounts is subject to the district court's discretion. *JT Wallenbrock*, 440 F.3d at 1113. The amount of disgorgement should include all proceeds obtained from the securities violations and is not limited to only those proceeds the defendant personally benefitted from. *JT Wallenbrock*, 440 F.3d at 1113-14; *Platforms Wireless*, 617 F.3d at 1097. Disgorgement need only be a "reasonable approximation of profits causally connected to the violation" or "reasonably approximates the amount of unjust enrichment." *Platforms Wireless*, 617 F.3d at 1096; *First Pac. Bancorp*, 142 F.3d at 1192 n. 6. The SEC bears the burden of

showing the causal relationship between the wrongdoing and the funds. *SEC v. Loomis*, 17 F.Supp.3d 1026, 1030 (E.D. Cal. 2014) (citations omitted).

Additionally, the "SEC 'bears the ultimate burden of persuasion that its disgorgement figure reasonably approximates the amount of unjust enrichment.'" *Platforms Wireless*, 617 F.3d at 1096 (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989) and citing *First Pac. Bancorp*, 142 F.3d at 1192 n. 6). "Once the SEC establishes a reasonable approximation of defendants' actual profits…the burden shifts to the defendants to 'demonstrate that the disgorgement figure was not a reasonable approximation.'" *Id.* (citing cases). "[W]here two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws, they have been held jointly and severally liable for the disgorgement of illegally obtained proceeds." *Id.* at 1098 (quoting *First Pac. Bancorp*, 142 F.3d at 1191).

In this case, the SEC has calculated the total amount of funds raised by the Defendants subject to disgorgement to be $14,567,030.00 as that amount represents the total funds raised by the Defendants from the securities violations. (Dkt. 300.) The funds raised by Defendants were by way of the sale of unregistered common stock in violation of the securities laws. (Dkt. 281.) The Defendants have not contested the amount of this approximation. (Dkt. 308, 322.) Instead, AEHI opposes the request for disgorgement arguing *res judicata* bars further disgorgement because its shareholders have already been made whole for these securities violations in the settlement of the class action in the case of *Teague v. AEHI*, Case No. 1:10-cv-00634-BLW. (Dkt. 308 at 7.) Further, AEHI argues the equitable considerations weigh against ordering disgorgement including that the

former executives who perpetrated the fraud have left the company, there are no profits or gains to be disgorged as all of the money has been spent on ordinary and necessary business expenses, and that further disgorgement will only further damage the shareholders by eliminating the remaining cash the company hopes to use to monetize the remaining assets to provide a return to the shareholders. (Dkt. 308 at 2-3, 8.)

The SEC counters that these arguments are irrelevant to the determination of disgorgement, where the primary purpose is to remove ill-gotten gains from a defendant, and challenges the factual foundations for AEHI's arguments. (Dkt. 314.) In particular, the SEC states that its preference is to use the funds paid in disgorgement to make a distribution to shareholders who have been harmed; disputes that the shareholders affected by the violations in this case have been made whole by the settlement in the *Teague* case; challenges AEHI's attempts to distance itself from Mr. Gillispie and explain the "business expenses" and/or "business activities" of the company; and maintains there is a need for deterrence. (Dkt. 314 at 2-8.) AEHI's sur-reply maintains that its arguments raised in opposition to the request for disgorgement are relevant equitable arguments that the Court should consider in determining whether to order disgorgement in this case. (Dkt. 322.)

This Court has reviewed the arguments and materials submitted by the parties on this question as well as the record in this case and the record in *Teague*. Having done so, the Court finds as follows.

A. *Teague* Settlement

AEHI asserts that the *Teague* case resolved all claims of all shareholders except for seven who opted out of the class action and, therefore, *res judicata* and the principles of equity bar further disgorgement. (Dkt. 308 at 7-8.) The *Teague* case was a class action suit brought by shareholders of AEHI against the same Defendants named in this case. The class was asserted on behalf of "all persons who purchased the publicly traded common stock of [AEHI] during the period from October 23, 2006 through December 14, 2010, inclusive." (*Teague* Dkt. 90, 91, 104.)[2] Thus, the securities violations in this case occurred during the same time frame as the class defined in *Teague.* (Dkt. 87.) The SEC, however, argues the class action did not address persons who purchased shares directly from the company in unregistered transactions and/or shareholders who were directly solicited through the "private placement memoranda." (Dkt. 314 at 3-5.) Further, the SEC contends that the *Teague* settlement of a damages claim does not absolve the Defendants from their liability to the SEC.

This Court concludes that the principles of *res judicata* do not bar the SEC's claims brought in this case. Under the doctrine of *res judicata*, or claim preclusion, a final judgment on the merits "bars 'all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties ... on the same cause of action.'" *C.D. Anderson & Co., Inc. v. Lemos*, 832 F.2d 1097, 1100 (9th Cir. 1987) (citing *McClain v. Apodaca*, 793 F.2d 1031, 1033 (9th Cir.1986)). *Res judicata* prohibits a

[2] When citing to the docket in Case No. 1:10-cv-00634-BLW, this Court will use "(*Teague* Dkt. ##)".

second lawsuit involving the (1) same controversy (2) between the same parties or their privies (3) so long as the prior lawsuit was a final judgment on the merits. *Mycogen Corp. v. Monsanto Co.*, 28 Cal.4th 888, 896–97 (2002). It also applies to those claims which could have been litigated as part of the prior cause of action. *See Clark v. Yosemite Comm. College Dist.*, 785 F.2d 781, 786 (9th Cir. 1986). A plaintiff cannot avoid the bar of claim preclusion merely by alleging conduct by the defendant not alleged in the prior action, or by pleading a new legal theory. *See McClain*, 793 F.2d at 1034.

The SEC initiated this action on December 16, 2010, and later filed an amended complaint in July of 2011, alleging violations of Sections 20(b) and 20(d) of the Securities Act of 1933 and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934. (Dkt. 1, 87.) The Complaint in *Teague* case was not filed until December 20, 2010 and later amended on June 17, 2011. (*Teague* Dkt. 1, 29.) The claims brought by the shareholders in the *Teague* case were for violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 alleging the Defendants engaged in a scheme to manipulate and artificially inflate the market price of AEHI's stock and making false statements to investors. (*Teague* Dkt. 29.) The facts giving rise to the claims in both cases surround substantially the same misconduct by Defendants. (*Teague* Dkt. 73 at 2.) The claims, however, are distinct. Further, the SEC was not a party in the *Teague* case nor a privy to any parties in that matter. As such, the Court finds that the doctrine of *res judicata* does not bar this action.

Further, the Court has reviewed the *Teague* settlement and concludes that it does not preclude an order of disgorgement in this case. That settlement involved payment to the shareholder class for the damages they suffered as a result of the Defendants' misconduct. The purpose of ordering disgorgement in this case, as discussed more below, is a remedy for violations of the securities laws so as to deprive violators of their ill-gotten gains, thereby effectuating the deterrence objectives of those laws. *See, e.g.*, *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991); *SEC v. Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 102 (2d Cir. 1978). Thus, the Court disagrees with AEHI's contention that disgorgement is barred by the *Teague* settlement.[3] The Court does, however, take note of the *Teague* settlement insofar as it is a relevant equitable consideration when determining whether to order disgorgement and the amount, if any.

B. Order of Disgorgement

AEHI argues that ordering disgorgement of its remaining assets would only damage the shareholders who are the very people the securities laws are designed to protect. (Dkt. 308 at 8.) The SEC counters that disgorgement is appropriate in this case to

[3] AEHI cites to *SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450 (2nd Cir. 1996) for the proposition that under the doctrine of *res judicata*, the prior *Teague* settlement bars "further disgorgement" in this case. (Dkt. 308 at 7) (Dkt. 322 at 5.) In that case, however, the Second Circuit rejected the *res judicata* defense and went on to uphold the trial court's order of disgorgement stating:

> Since disgorgement is a method of forcing a defendant to give up the amount by which he was unjustly enriched, it is unlike an award of damages, and is neither foreclosed nor confined by an amount for which injured parties were willing to settle. A settlement payment may properly, however, be taken into account by the court in calculating the amount to be disgorged....

Id. at 1475 (citation omitted).

recover the ill-gotten funds from the Defendants and to deter others from violations of the securities laws. (Dkt. 314.)

Again, the primary purpose of disgorgement as a remedy for violation of the securities laws is to deprive violators of their ill-gotten gains, thereby effectuating the deterrence objectives of those laws. *See, e.g.*, *First Pac. Bancorp*, 142 F.3d at 1191 and *Wang*, 944 F.2d at 85. "[T]he court is not awarding damages to which plaintiff is legally entitled but is exercising the chancellor's discretion to prevent unjust enrichment. The goal is not to compensate for losses but to deprive the wrongdoer of his ill-gotten gain." *SEC v. Teo*, 746 F.3d 90, 105 (citations and quotations omitted).[4]

With this purpose in mind, the Court has considered the arguments of the parties in making its determination as to whether an order of disgorgement is appropriate in this case. On the one hand, as the SEC points out, disgorgement is proper because of the Defendants' actions, the nature of the fraudulent scheme, the numerous false statements made by Defendants, as well as the unlawful registration violations. AEHI, on the other hand, points to equitable reasons for not ordering disgorgement such as distancing the company from the former executives who perpetuated the fraud, focusing on using what is left of the company's assets to "monetize" those assets, and the fact that the company has no ability to pay. In support of their argument, AEHI has filed supporting materials in the form of affidavits and declarations. (Dkt. 309-311.) The SEC disputes the underpinnings of the supporting materials and maintains that disgorgement is appropriate here.

[4] This distinction further evidences the differences between this action and the *Teague* case and the reasons why the settlement in *Teague* does not preclude an order of disgorgement in this case.

Having reviewed these arguments, the materials filed in support, and the entire record herein, the Court finds that disgorgement is appropriate in this case. While the Court understands AEHI's position and efforts to attempt to maximize what is left of its assets, the fact remains that the purpose of disgorgement is to recover the money obtained by Defendants' fraudulent conduct and to deter future violations of securities laws. *First Pac. Bancorp*, 142 F.3d at 1191. The value that AEHI's supporting materials seek to attribute to its assets and the equitable reasons argued by AEHI, simply do not overcome the need to satisfy the purposes of disgorgement in this case.

The fraud committed by Defendants in this case was large in scale and was the source of AEHI's money and assets. Again, the purpose of disgorgement is to deprive those who violate securities laws of those ill-gotten funds. Furthermore, disgorgement is intended "to deter others from violating securities laws by making violations unprofitable." *First Pac. Bancorp*, 142 F.3d at 1191. To turn what remains of the ill-gotten funds back over to AEHI now in the hope of maximizing what is left of the assets, however well intended AEHI's new leadership might be, would fly in the face of these aims and the purposes of disgorgement. The Court recognizes it has broad equitable power in making this determination but concludes that the equitable concerns are overcome by the need to satisfy the purposes of disgorgement given the facts and circumstances of this case.

The Court further finds that the entire amount of the funds received by the Defendants from the stock sales are all proceeds from the securities violations and a reasonable approximation of the amount of the unjust enrichment obtained by the

Defendants in this case. Furthermore, Defendant Gillispie was the central figure in the operations and decisions of the entity Defendant, AEHI. (Dkt. 281.) For all intents and purposes, Defendant Gillispie was the controlling person at AEHI and responsible for the securities violations. Thus, the two Defendants had the requisite "close relationship" in engaging in the violations of the securities laws needed to impose joint and several liability for the disgorgement of the illegally obtained proceeds. For these reasons and based on the entire record herein, the Court finds the disgorgement proceeds calculated by the SEC to reasonably approximate the amount of the unjust enrichment. Further, the Court finds disgorgement is warranted in this case as it will deprive the wrongdoers of unjust enrichment from the ill-gotten gains and serve to deter others from violating securities laws by making violations unprofitable. *See Platforms Wireless*, 617 F.3d at 1096.

3. Prejudgment Interest

The SEC has submitted the Declaration of Susan F. Lamarca in support of its Motion which calculated prejudgment interest as $245,036.00 based on the application of the statutory rate found in 28 U.S.C. § 1961. (Dkt. 300.)

"In general, '[t]he decision whether to grant prejudgment interest and the rate used if such interest is granted are matters confided to the district court's broad discretion,' taking into consideration '(i) the need to fully compensate the wronged party for actual damages suffered, (ii) considerations of fairness and the relative equities of the award, (iii) the remedial purpose of the statute involved, and/or (iv) such other general principles as are deemed relevant by the court.'" *SEC v. Olins*, 762 F.Supp.2d 1193, 1198-99 (N.D.

Cal. 2011) (quoting *First Jersey Sec.*, 101 F.3d at 1476). Section 1961, which the SEC used in its calculation here, is generally used to compute interest on money judgments in civil cases, and is used "unless the equities of a particular case demand a different rate." *Platforms Wireless*, 617 F.3d at 1099 (quoting *In re Nucorp Energy, Inc.*, 902 F.2d 729, 734 (9th Cir. 1990)). The Ninth Circuit, however, has calculated prejudgment interest in securities violation cases based on the tax underpayment rate set forth in 26 U.S.C. § 6621 instead of the rate found in 28 U.S.C. § 1961 stating:

> We conclude, however, that Section 1961 provides an inappropriate interest rate in this case. The treasury-bill rate in Section 1961 reflects the interest rate paid for lending money to the U.S. Government, not for borrowing money. It is therefore "not an appropriate measure of prejudgment interest to charge in remedial proceedings, where the purpose of the prejudgment interest is to deny a wrongdoer any economic benefit from his violations." By imposing a lower interest rate than the one reflected in Section 6621, the defendants would benefit from their unlawful conduct by obtaining their $1.75 million "loan" from investors at a below-market rate.

Id. (citations omitted). Regardless, the Court finds an award of prejudgment interest and the calculation made under § 1961 to be appropriate in this case and the Court will order the same.

4. Civil Penalty

As with the permanent injunction, civil penalties are imposed to deter the wrongdoer from similar future violations. Both the Securities Act and the Exchange Act allow the Court to impose a civil penalty against those who violated it by establishing three tiers of penalties limiting the maximum amount to be awarded in any given case. *See* 15 U.S.C. §§ 77t(d) and 78u(d)(3). The Court may order a "first-tier" penalty "in light

of the facts and circumstances" of the case. *Olins*, 762 F.Supp.2d at 1199. A higher, "second-tier," penalty is only warranted for a violation "involv[ing] fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." *Id.* Finally, a "third-tier" penalty is warranted only where there is a further showing that "such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." *Id.* (citation omitted). "The specific amount of the civil penalty imposed within each tier is, however, discretionary." *Id.* (quoting *SEC v. Moran*, 944 F.Supp. 286, 296–97 (S.D.N.Y. 1996)). The appropriate amount of any civil penalty is determined by evaluating the *Murphy* factors listed above in the permanent injunction section.

In this case, the SEC asks the Court to impose the highest level penalty, third tier, arguing the Defendants' conduct in this case involved fraud or deceit and the conduct created a significant risk of substantial losses to other persons. (Dkt. 299 at 14.) AEHI requests that the Court limit the civil penalty because: 1) the former executives who are culpable for the violations have left the company, 2) the need to deter future conduct is gone as the current business plan is to monetize the remaining assets and to have no further offerings, and 3) AEHI has no ability to pay a civil penalty beyond the cash that has been frozen in this case. (Dkt. 308 at 8-9.) The SEC counters that the primary purpose of civil monetary penalties is to deter such conduct by making it unprofitable and the requested civil penalty is appropriate in this case to effectuate such a message and ensure the integrity of the financial markets. (Dkt. 314 at 3.)

Having reviewed the record in this matter, the Court finds the securities violations are such that the Defendants are subject to third tier penalties. The Defendants actions here involved fraud, deceit, manipulation, or deliberate and/or reckless disregard of a regulatory requirement. The Defendants engaged in a scheme of illegal offerings of securities to numerous public investors using misleading information. (Dkt. 281.) The public and investors were misled by these fraudulent and deceptive misrepresentations. As a result of their deceptive practices, the Defendants amassed over $14 million from approximately 850 investors most of which is now gone. These losses are substantial. Accordingly, the Court finds third tier civil penalties are warranted in this case.

For third tier violations, the amount of the penalty for each such violation "shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation…." 15 U.S.C. §§ 77t and 78u(d)(3)(B)(iii).[5] The appropriate amount of the penalty is determined based on the facts and circumstances of a particular case. *See* 15 U.S.C. § 78u(d)(3)(B)(i). In making this determination, courts generally consider: (1) the degree of scienter involved; (2) the isolated or recurrent nature of the infraction; (3) the defendant's recognition of the wrongful nature of his conduct; (4) the likelihood, because of defendant's professional occupation, that future violations might occur; (5) and the sincerity of his assurances against future violations. *SEC v. CMKM Diamonds, Inc.*, 635 F.Supp.2d 1185, 1192 (D. Nev. 2009) (citation omitted). A court may also examine a

[5] The applicable Code of Federal Regulations, 17 C.F.R. § 201.1004, adjusted the civil penalty amounts for conduct occurring in or after 2009. Under this adjustment, the maximum amounts for a third tier violation the maximum amounts are $130,000 for a natural person and $650,000 for any other person. The conduct giving rise to the securities violations in this case began in 2006 and continued through much of 2010.

defendant's ability to pay the civil fine in determining the appropriate amount. *See SEC v. Jasper*, 883 F.Supp.2d 915, 931–32 (N.D. Cal. 2010). Civil penalties are intended to punish the wrongdoer and deter future violations. *See SEC v. Tourre*, 4 F.Supp.3d 579 (S.D.N.Y. 2014).

Here, the Court finds a penalty against Defendant Gillispie in the amount of $50,000 is appropriate. Defendant Gillispie was centrally involved in the recurrent securities violations which this Court has already concluded were done with the requisite degree of scienter. Additionally, Defendant Gillispie's conduct suggests little recognition of the wrongful nature of his conduct and/or sincerity of any assurances he may make against future violations. Further, as previously stated, the Court finds there is a likelihood that Defendant Gillispie may commit future violations.

As to the Defendant AEHI, the Court finds a civil penalty in the amount of $200,000 is appropriate. Again, the securities violations were repeated, intentional, and ongoing for approximately four years. Further, the nature of AEHI's business necessitates securing investors and gives rise to a likelihood of future securities violations.

5. Conclusion

Based on the foregoing, the Court finds the SEC has supplied sufficient evidence to show that the Defendants' engaged in conduct violating Sections 5(a), 5(c) and 17(a) of the Securities Act, 15 U.S.C. § 77e(a) & 77e(c) and 77q(a); and Section 10(b) of the Exchange Act, 15 U.S.C. § 78(j); and Rule 10b-5, 17 C.F.R. § 240.10b-5, and unless restrained and enjoined would likely engage in future violations of these provisions. As such the requested permanent injunction is appropriate in this case. Additionally, the

Court finds the Defendants AEHI and Donald L. Gillispie obtained ill-gotten gains from their violations of the above provisions in an amount of approximately $14,567,030, and that with the appropriate pre-judgment interest thereon of approximately $245,036, the Defendants should together be jointly and severally liable for disgorgement of $14,812,066. Additionally, the Court finds the imposition of civil penalties against both Defendants is appropriate as stated herein. Accordingly, the Court will grant the Motion for Entry of Judgment as follows.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Defendant Gillispie's Motions to Stay (Dkt. 305, 313) are **WITHDRAWN**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Final Judgment as to the First, Second, and Sixth Causes of Action against the Defendants AEHI and Gillispie (Dkt. 298) is **GRANTED** and based thereon it is HEREBY ORDERED THAT:

1. Defendants AEHI and Donald L. Gillispie, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are permanently restrained and enjoined from, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly:

A. employing any device, scheme, or artifice to defraud;

B. obtaining money or property by means of any untrue statement of a material fact or any omission to state 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. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

2. Defendants AEHI and Donald L. Gillispie, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

A. Employing any device, scheme or artifice to defraud;

B. Making any untrue statement of a material fact or omitting 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. Engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

3. Defendants AEHI and Donald L. Gillispie, and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, are permanently restrained and enjoined from, directly or indirectly, in the absence of any applicable exemption:

A. Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

B. Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

C. Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the SEC as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h;

in violation of Section 5 of the Securities Act, 15 U.S.C. § 77e.

4. Defendants AEHI and Donald L. Gillispie, and each of them, are jointly and severally liable for disgorging ill-gotten gains of $14,567,030, together with prejudgment interest thereon in the amount of $245,036, for a total disgorgement of $14,812,066. Defendants shall make payment of the total amount within thirty (30) days of the date of this Order. Defendants may transmit payment electronically to the SEC, 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. Defendants 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; Donald L. Gillispie and/or Alternate Energy Holdings, Inc. as defendants in this action; and specifying that payment is made pursuant to this Final Judgment. In making such payment, Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the SEC'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 SEC shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

5. Defendant Donald L. Gillispie shall pay a civil penalty in the amount of $50,000 pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d). Defendant shall make this payment within thirty (30) business days after entry of this Final Judgment by the same means set forth above (Paragraph IV). The SEC shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

6. Defendant AEHI shall pay a civil penalty in the amount of $200,000 pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d). Defendant shall make this payment within thirty (30) business days after entry of this Final Judgment by the same means set forth above (Paragraph IV). The SEC shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

7. Pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), and Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), Defendant Donald L. Gillispie is permanently prohibited as of the date of entry of this Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78*l*, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

8. Pursuant to 15 U.S.C. §§ 77t(g) & 78u(d)(6), Defendant Donald L. Gillispie is permanently barred, as of the date of entry of this Final Judgment, from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale

of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act, 17 C.F.R. 240.3a51-1

IT IS FURTHER ORDERED that the SEC shall file a written notification with the Court as to how it intends to proceed on the remaining claims in this case on or before **June 29, 2015**.

DATED: **May 21, 2015**

Honorable Edward J. Lodge
U. S. District Judge