UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. J.T. WALLENBROCK & ASSOCIATES, LARRY TOSHIO OSAKI, VAN Y. ICHINOTSUBO, AND CITADEL CAPITAL MANAGEMENT GROUP, INC., Defendants.	Case No. CV 02-808 ER ORDER GRANTING SEC MOTION FOR DISGORGEMENT, PREJUDGMENT INTEREST, CIVIL PENALTIES AND FINAL JUDGMENT THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

The Court has read and considered all papers filed in connection with the SEC's Motion for an Order Imposing Disgorgement, Prejudgment Interest, Civil Penalties and Final Judgment Against Defendants. On November 25, 2003, the Court conducted a hearing. For the reasons stated in open court, and based on the record, the Court has reached the following CONCLUSIONS:

[1] On February 28, 2003, the Court entered an Order of Permanent Injunction Against Defendants. The Current Motion is made by the SEC pursuant to the Permanent Injunction and Consent, which provided that the amount of disgorgement plus prejudgment interest and civil penalties would be determined by the Court upon subsequent motion by either party.

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[2] From at least 1997 through January, 2002, Defendants Larry T. Osaki and Van Y. Ichinotsubo operated a Ponzi scheme through Defendants J.T. Wallenbrock, Inc. ("Wallenbrock") and Citadel Capital Management Group, Inc. ("Citadel"). Defendant Larry T. Osaki and Van Y. Ichinotsubo operated a Ponzi scheme through Defendants J.T. Wallenbrock and Citadel Capital Management Group, Inc.. Defendant Osaki was the managing general partner of Wallenbrock, the controlling owner of Defendant Citadel, and the operator of the entire scheme. Defendant Ichinotsubo was an employee of Defendants Wallenbrock and Citadel, and solicited investors for Wallenbrock.

[3] Defendants raised money from investors through the fraudulent sale of unregistered three-month Wallenbrock promissory notes that promised a 20% return for investors upon maturity of each three month period. Defendants made fraudulent representations to potential investors that they were purchasing accounts receivable of Malaysian latex glove manufacturers with the proceeds of investors' notes. Defendants Osaki and Ichinotsubo knew, or were reckless in not knowing, that their representations regarding the accounts receivable were false.

[4] Through the scheme, Defendants violated federal securities law antifraud provisions, including Sections 10(b) and15(c)(1) of the Securities Exchange Act of 1934 (and related Rules 10b-5 and 15c1-2), and Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Exchange Act of 1933. Pursuant to the February 28, 2003 Permanent Injunction and Consent, Defendants are precluded from arguing, in response to the current Motion, that they did not violate the federal securities laws as set out in the SEC's Complaint.

[5] The Court has broad equity powers to order the disgorgement of 'ill-gotten gains' obtained through the violation of the securities laws." SEC v. First Pacific Bankcorp, 142 F.3d 1186, 1190 (9th Cir. 1998), *cert. denied*, 525 U.S. 1121 (1999)(citations omitted). The "purpose of disgorgement is to deprive a person of ill-gotten gains and prevent unjust enrichment." Hateley v.SEC, 8 F.3d 653, 655

(9th Cir. 1993)(citations omitted).

[6] The amount of disgorgement need only be a reasonable approximation of profits linked to the fraudulent scheme. See SEC v. First Pacific Bankcorp, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998), *cert. denied*, 525 U.S. 1121 (1999)(citations omitted). Furthermore, "'[t]he risk of uncertainty' in computing disgorgement 'should fall on the wrongdoer whose illegal conduct created that uncertainty.'" SEC v. Interlink Data Network, 1993 WL 603274 (C.D. Cal. 1993)(quoting SEC v. First City Financial Corp., 890 F.2d 1215, 1231 (D.C.Cir.1989))(citations omitted).

[7] The Court finds that the figures determined by the Samuel R. Biggs, CPA (the Receiver's Accountant) and the Affidavit of Luz M. Aguilar, SEC Senior Accountant are a reasonable and accurate approximation of the profits of the fraudulent scheme, and related prejudgment interest calculations. The SEC notes that the Affidavit of Ms. Aguilar may be relied on for calculations fo prejudgment interest only, while Mr. Biggs's affidavit may be relied on for other calculations.

[8] "Where two or more individuals or entities collaborate or have a close relationship in engaging in violations of the securities laws, they have been held jointly and severally liable for the disgorgement of illegally obtained proceeds" SEC v. First Pacific Bankcorp, 142 F.3d 1186, 1190 (9th Cir. 1998), *cert. denied*, 525 U.S. 1121 (1999) Based on the record before the Court, Defendants Osaki, Wallenbrock, and Citadel evince such a "close relationship" and jointly profited from the fraudulent scheme. All investor funds flowed through Mr. Osaki, who deposited funds in his bank account, and controlled the distribution of such funds to Defendants Wallenbrock and Citadel.

[9] Defendants argue that Citadel is a mere nominal Defendant, who should not be subject to joint and several liability. Defendants fail to provide support for this contention. Defendant Citadel was a named Defendant in this litigation, and by the February 28, 2003 Permanent Injunction and Consent, Defendant Citadel is precluded from arguing that it did not violate the federal securities laws as set out

in the SEC's Complaint.

[10] As demonstrated by the accounting, Defendants Osaki, Wallenbrock, and Citadel received at least $253,173,962 from investors and spent a total of $250,135,353. $113,755,684 of the money was repaid to investors, and are therefore, deducted from the SEC's disgorgement request. The records also indicate that $136,379,670 was spent by Defendants Osaki, Wallenbrock, and Citadel for their own benefit.

[11] The SEC requests that $136,379,670 in ill-gotten gains obtained from the scheme be disgorged from the Defendants Osaki, Wallenbrock, and Citadel.

[12] Defendants contend that the "reasonable approximation" should be determined by the amount of a defendant's enrichment, rather than the losses suffered by the victims. Defendants cite SEC v. First Pacific Bankcorp, 142 F.3d 1186, 1190 (9th Cir. 1998) & Hately v. SEC, 8 F.3d 653 to support the contention that the Court must order disgorgement only of the personal benefit actually retained, not the amount of ill-gotten gains generated.

[13] Defendants' description of the above decisions is inaccurate. The Hately case stands for the proposition that amounts defendants held joint and severally liable improperly exceeded the total amount of unjust enrichment, and was more than ten times the amount of the defendants' actual ill-gotten gains.

[14] Courts are not restricted to disgorging the total amount of personal benefit actually retained, as Defendants contend. The D.C. Circuit Court concluded, "To hold, as [the defendant] maintains, that a court may order a defendant to disgorge only the actual assets unjustly received would lead to absurd results. Under [that] approach, for example, a defendant who was careful to spend all the proceeds of his fraudulent scheme, while husbanding his other assets, would be immune from an order of disgorgement. [This] would be a monstrous doctrine for it would perpetuate rather than correct an inequity." SEC v. Banner Fund Int'l, 211 F.3d 602, 617 (D.C. Cir. 200)(emphasis added).

[15] In addition, the SEC seeks the award of prejudgment interest on the disgorgement amount. The Court has broad discretion in deciding whether to grant such prejudgment interest and what rate should be used to calculate the amount of interest. See SEC v. First Jersey Securities, 101 F.3d 1450, 1476 (2d Cir. 1996)(citations omitted). Courts have used the Internal Revenue Service rates for underpayment of taxes, pursuant to 26 U.S.C. §6621(a)(2), in calculating prejudgment interest. See SEC v. Rosenfeld, 2001 WL 118612, *3 (S.D.N.Y. Jan. 9, 2001).

[16] Defendants argue that Prejudgment Interest, if awarded, should be calculated under 28 U.S.C. § 1961. Defendants offered no calculations, nor did Defendants explain in court why this rate was appropriate in this case. Defendants point to In Re Nucorp Energy, Inc., in which the Court calculated the Prejudgment Interest according to 28 U.S.C. §1961. In Nucorp Energy, the Court did note, "Title 28 U.S.C. § 1961 (1982 & Supp. IV 1986) is to be used for the calculation of prejudgment interest 'unless the equities of a particular case demand a different rate.' In Re Nucorp Energy, Inc, 902 F.2d 729, 734 (9th Cir. 1990)(citing In re Bloom, 875 F.2d 224, 228 (9th Cir.1989) (quoting Columbia Brick Works, Inc. v. Royal Ins. Co., 768 F.2d 1066, 1071 (9th Cir.1985))).

[17] The Court finds that the equities of this case warrant use of the Internal Revenue Service rates for underpayment of taxes, pursuant to 26 U.S.C. §6621(a)(2). This "rate reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from its fraud." SEC v. First Jersey Securities, 101 F.3d 1476. In addition, as the SEC noted, a small post-interest judgment rate of approximately 1%, suggested by Defendants, would not fairly compensate victims of the scheme who were promised a 20% rate of return.

[18] Pursuant to the calculations based on the disgorgement amount and the rate under 26 U.S.C. §6621(a)(2), the SEC has demonstrated to the Court that

Defendants Osaki Wallenbrock and Citadel should be required to pay $24,270,233 in prejudgment interest.

[19] The SEC argues that the following ill-gotten gains obtained from the scheme should be disgorged from the Defendant Ichinotsubo, as he recruited investors and significantly assisted the other Defendants in the fraudulent scheme, with at least a reckless disregard re: the representations he made re: the existence of the accounts receivable.

[20] The SEC requests that $409,798 in ill-gotten gains obtained from the scheme should be disgorged from the Defendant Ichinotsubo. The $409,798 includes $232,704 in payroll payments, $36,503 in unpaid loans from Citadel (made to Defendant Ichinotsubo personally and to Defendant Ichinotsubo's company, Choice Investments), a $50,000 unpaid loan to Choice Investments for options trading, a $60,591 credit card payment made by Osaki with investor funds on Ichinotsubo's behalf, and a $30,000 direct payment of investor funds from Osaki's Bank Account.

[21] Pursuant to calculations based on the disgorgement amount and the rate under 26 U.S.C. §6621(a)(2), the SEC contends that Defendant Ichinotsubo should also be required to pay $85,435 in prejudgment interest.

[22] Defendants argue that Defendant Ichinotsubo has invested $1.2 million and received only $409,000 from Wallenbrock. Defendants argue that this loss constitutes disgorgement, and urges that no further money should be disgorged.

[23] Such an argument has been rejected by the Ninth Circuit. In SEC v. First Pacific Bankcorp, the Court noted, "Nor does the fact that [defendant's] scheme ultimately failed and he lost a $1,000,000 of his own funds release him from his obligations toward the defrauded investors. As Judge Friendly once stated in a securities manipulation case, there is 'no reason why, in determining how much should be disgorged in a case where defendants have manipulated securities so as to mulct the public, the court must give them credit for the fact that they had

not succeeded in unloading all their purchases at the time when the scheme collapsed.'" SEC v. First Pacific Bankcorp, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998)(quoting SEC v. Commonwealth Chem. Sec. Inc., 574 F.2d 90, 102 (2d Cir.1978)). Therefore, Defendants' argument regarding Defendant Ichinotsubo's disgorgement must be rejected.

[24] The Court finds that the amount of disgorgement, joint and several, from Defendants Osaki, Wallenbrock, and Citadel, should be reduced to the extent of Defendant Ichinotsubo's payments to prevent duplication of recovery.

[25] The SEC further argues for the imposition of Third-tier civil penalties against Defendants Osaki and Ichinotsubo, pursuant to 15 U.S.C.§ 78t(d) and 15 U.S.C. § 78u(d)(3).

[26] 15 U.S.C.§ 78t(d)(2)(c) and 15 U.S.C. § 78u(d)(3)(B)(iii) provide third-tier civil penalties when securities law violations "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement [and] such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial loss to other persons."

[27] In the instant case, Defendants' securities violations involved fraud and deceit, were numerous and ongoing. In addition, Defendants' actions were extreme departures from the securities laws and created a significant loss to investors who purchased the Wallenbrock securities based on Defendants' fraudulent behavior. See SEC v. Rosenfeld, 2001 WL 118612, *4 (S.D.N.Y.) Therefore, the imposition of Third-tier penalties appears to be appropriate.

[28] The maximum third-tier penalties provided by 15 U.S.C.§ 78t(d)(2)(c) and 15 U.S.C §78u(d)(3)(B)(iii) are $100,000 for a natural person. The Court finds that the imposition of the maximum penalties is appropriate considering Defendant Osaki's and Ichinotsubo's behavior.

[29] The SEC further requests that the civil penalties be paid to the Court Registry and added to the investor distribution fund, for the benefit of investors

harmed by the fraudulent scheme, pursuant to Section 308 of the Sarbanes-Oxley Act of 2002. The Court finds the investor fund to be an appropriate recipient of the penalties.

[30] The Court finds that for the aforementioned reasons, the reasons stated in open court, and based on the record, that the SEC has demonstrated by a preponderance of the evidence the appropriate amounts of Disgorgement, Prejudgement Interest, and Civil Penalties. See SEC v. Truong, 98 F.Supp.2d 1086, 1096 (N.D. Cal 2000)(citing SEC v. Moran, 922 F. Supp. 867, 890 (S.D.N.Y. 1996)).

[31] The Court HEREBY GRANTS the SEC's Motion for an Order Imposing Disgorgement, Prejudgment Interest, Civil Penalties and Final Judgment Against Defendants.

[32] The Court ORDERS the imposition of disgorgement against Defendants Osaki, Wallenbrock and Citadel, joint and severally of $139,418,278 plus prejudgment interest of $24,270,233.

[33] The Court FURTHER ORDERS disgorgement against Defendant Ichinotsubo of $409,798 plus prejudgment interest of $85,435.

[34] The Court FURTHER ORDERS the imposition of third-tier civil penalties of $100,000 each upon Defendants Osaki and Ichinotsubo, to be paid to the Court Registry and added to the investor distribution fund

[35] The Court FURTHER ORDERS that the amount of disgorgement, joint and several, from Defendants Osaki, Wallenbrock, and Citadel will be reduced to the extent of Defendant Ichinotsubo's payments.

[36] The Court ORDERS that Defendants make the above payments within 30 days of the filing of this order.

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IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail or by telefax or by email, copies of this Order on counsel for the parties in this matter.

Dated: DEC 10 2003

EDWARD RAFEEDIE
Senior United States District Judge