

1 SEND / ENTER / JS-6  
2  
3  
4  
5  
6  
7  
8  
910  
11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
13  
14  
15  
16  
1718 SECURITIES AND EXCHANGE  
19 COMMISSION,

20 Plaintiff,

21 v.

22 NICHOLAS A. CZUCZKO,

23 Defendant.

24 ) Case No. CV 06-4792 ODW (SSx)  
25 )  
26 ) ORDER GRANTING  
27 ) PLAINTIFF'S UNOPPOSED  
28 ) MOTION FOR SUMMARY  
29 ) JUDGMENT  
30 )  
31 ) ENTRY OF JUDGMENT IN  
32 ) FAVOR OF PLAINTIFF  
33 )  
34 )  
35 )  
36 )  
37 )  
38 )  
39 )  
40 )  
41 )  
42 )  
43 )  
44 )  
45 )  
46 )  
47 )  
48 )  
49 )  
50 )  
51 )  
52 )  
53 )  
54 )  
55 )  
56 )  
57 )  
58 )  
59 )  
60 )  
61 )  
62 )  
63 )  
64 )  
65 )  
66 )  
67 )  
68 )  
69 )  
70 )  
71 )  
72 )  
73 )  
74 )  
75 )  
76 )  
77 )  
78 )  
79 )  
80 )  
81 )  
82 )  
83 )  
84 )  
85 )  
86 )  
87 )  
88 )  
89 )  
90 )  
91 )  
92 )  
93 )  
94 )  
95 )  
96 )  
97 )  
98 )  
99 )  
100 )  
101 )  
102 )  
103 )  
104 )  
105 )  
106 )  
107 )  
108 )  
109 )  
110 )  
111 )  
112 )  
113 )  
114 )  
115 )  
116 )  
117 )  
118 )  
119 )  
120 )  
121 )  
122 )  
123 )  
124 )  
125 )  
126 )  
127 )  
128 )  
129 )  
130 )  
131 )  
132 )  
133 )  
134 )  
135 )  
136 )  
137 )  
138 )  
139 )  
140 )  
141 )  
142 )  
143 )  
144 )  
145 )  
146 )  
147 )  
148 )  
149 )  
150 )  
151 )  
152 )  
153 )  
154 )  
155 )  
156 )  
157 )  
158 )  
159 )  
160 )  
161 )  
162 )  
163 )  
164 )  
165 )  
166 )  
167 )  
168 )  
169 )  
170 )  
171 )  
172 )  
173 )  
174 )  
175 )  
176 )  
177 )  
178 )  
179 )  
180 )  
181 )  
182 )  
183 )  
184 )  
185 )  
186 )  
187 )  
188 )  
189 )  
190 )  
191 )  
192 )  
193 )  
194 )  
195 )  
196 )  
197 )  
198 )  
199 )  
200 )  
201 )  
202 )  
203 )  
204 )  
205 )  
206 )  
207 )  
208 )  
209 )  
210 )  
211 )  
212 )  
213 )  
214 )  
215 )  
216 )  
217 )  
218 )  
219 )  
220 )  
221 )  
222 )  
223 )  
224 )  
225 )  
226 )  
227 )  
228 )  
229 )  
230 )  
231 )  
232 )  
233 )  
234 )  
235 )  
236 )  
237 )  
238 )  
239 )  
240 )  
241 )  
242 )  
243 )  
244 )  
245 )  
246 )  
247 )  
248 )  
249 )  
250 )  
251 )  
252 )  
253 )  
254 )  
255 )  
256 )  
257 )  
258 )  
259 )  
260 )  
261 )  
262 )  
263 )  
264 )  
265 )  
266 )  
267 )  
268 )  
269 )  
270 )  
271 )  
272 )  
273 )  
274 )  
275 )  
276 )  
277 )  
278 )  
279 )  
280 )  
281 )  
282 )  
283 )  
284 )  
285 )  
286 )  
287 )  
288 )  
289 )  
290 )  
291 )  
292 )  
293 )  
294 )  
295 )  
296 )  
297 )  
298 )  
299 )  
300 )  
301 )  
302 )  
303 )  
304 )  
305 )  
306 )  
307 )  
308 )  
309 )  
310 )  
311 )  
312 )  
313 )  
314 )  
315 )  
316 )  
317 )  
318 )  
319 )  
320 )  
321 )  
322 )  
323 )  
324 )  
325 )  
326 )  
327 )  
328 )  
329 )  
330 )  
331 )  
332 )  
333 )  
334 )  
335 )  
336 )  
337 )  
338 )  
339 )  
340 )  
341 )  
342 )  
343 )  
344 )  
345 )  
346 )  
347 )  
348 )  
349 )  
350 )  
351 )  
352 )  
353 )  
354 )  
355 )  
356 )  
357 )  
358 )  
359 )  
360 )  
361 )  
362 )  
363 )  
364 )  
365 )  
366 )  
367 )  
368 )  
369 )  
370 )  
371 )  
372 )  
373 )  
374 )  
375 )  
376 )  
377 )  
378 )  
379 )  
380 )  
381 )  
382 )  
383 )  
384 )  
385 )  
386 )  
387 )  
388 )  
389 )  
390 )  
391 )  
392 )  
393 )  
394 )  
395 )  
396 )  
397 )  
398 )  
399 )  
400 )  
401 )  
402 )  
403 )  
404 )  
405 )  
406 )  
407 )  
408 )  
409 )  
410 )  
411 )  
412 )  
413 )  
414 )  
415 )  
416 )  
417 )  
418 )  
419 )  
420 )  
421 )  
422 )  
423 )  
424 )  
425 )  
426 )  
427 )  
428 )  
429 )  
430 )  
431 )  
432 )  
433 )  
434 )  
435 )  
436 )  
437 )  
438 )  
439 )  
440 )  
441 )  
442 )  
443 )  
444 )  
445 )  
446 )  
447 )  
448 )  
449 )  
450 )  
451 )  
452 )  
453 )  
454 )  
455 )  
456 )  
457 )  
458 )  
459 )  
460 )  
461 )  
462 )  
463 )  
464 )  
465 )  
466 )  
467 )  
468 )  
469 )  
470 )  
471 )  
472 )  
473 )  
474 )  
475 )  
476 )  
477 )  
478 )  
479 )  
480 )  
481 )  
482 )  
483 )  
484 )  
485 )  
486 )  
487 )  
488 )  
489 )  
490 )  
491 )  
492 )  
493 )  
494 )  
495 )  
496 )  
497 )  
498 )  
499 )  
500 )  
501 )  
502 )  
503 )  
504 )  
505 )  
506 )  
507 )  
508 )  
509 )  
510 )  
511 )  
512 )  
513 )  
514 )  
515 )  
516 )  
517 )  
518 )  
519 )  
520 )  
521 )  
522 )  
523 )  
524 )  
525 )  
526 )  
527 )  
528 )  
529 )  
530 )  
531 )  
532 )  
533 )  
534 )  
535 )  
536 )  
537 )  
538 )  
539 )  
540 )  
541 )  
542 )  
543 )  
544 )  
545 )  
546 )  
547 )  
548 )  
549 )  
550 )  
551 )  
552 )  
553 )  
554 )  
555 )  
556 )  
557 )  
558 )  
559 )  
560 )  
561 )  
562 )  
563 )  
564 )  
565 )  
566 )  
567 )  
568 )  
569 )  
570 )  
571 )  
572 )  
573 )  
574 )  
575 )  
576 )  
577 )  
578 )  
579 )  
580 )  
581 )  
582 )  
583 )  
584 )  
585 )  
586 )  
587 )  
588 )  
589 )  
590 )  
591 )  
592 )  
593 )  
594 )  
595 )  
596 )  
597 )  
598 )  
599 )  
600 )  
601 )  
602 )  
603 )  
604 )  
605 )  
606 )  
607 )  
608 )  
609 )  
610 )  
611 )  
612 )  
613 )  
614 )  
615 )  
616 )  
617 )  
618 )  
619 )  
620 )  
621 )  
622 )  
623 )  
624 )  
625 )  
626 )  
627 )  
628 )  
629 )  
630 )  
631 )  
632 )  
633 )  
634 )  
635 )  
636 )  
637 )  
638 )  
639 )  
640 )  
641 )  
642 )  
643 )  
644 )  
645 )  
646 )  
647 )  
648 )  
649 )  
650 )  
651 )  
652 )  
653 )  
654 )  
655 )  
656 )  
657 )  
658 )  
659 )  
660 )  
661 )  
662 )  
663 )  
664 )  
665 )  
666 )  
667 )  
668 )  
669 )  
670 )  
671 )  
672 )  
673 )  
674 )  
675 )  
676 )  
677 )  
678 )  
679 )  
680 )  
681 )  
682 )  
683 )  
684 )  
685 )  
686 )  
687 )  
688 )  
689 )  
690 )  
691 )  
692 )  
693 )  
694 )  
695 )  
696 )  
697 )  
698 )  
699 )  
700 )  
701 )  
702 )  
703 )  
704 )  
705 )  
706 )  
707 )  
708 )  
709 )  
710 )  
711 )  
712 )  
713 )  
714 )  
715 )  
716 )  
717 )  
718 )  
719 )  
720 )  
721 )  
722 )  
723 )  
724 )  
725 )  
726 )  
727 )  
728 )  
729 )  
730 )  
731 )  
732 )  
733 )  
734 )  
735 )  
736 )  
737 )  
738 )  
739 )  
740 )  
741 )  
742 )  
743 )  
744 )  
745 )  
746 )  
747 )  
748 )  
749 )  
750 )  
751 )  
752 )  
753 )  
754 )  
755 )  
756 )  
757 )  
758 )  
759 )  
760 )  
761 )  
762 )  
763 )  
764 )  
765 )  
766 )  
767 )  
768 )  
769 )  
770 )  
771 )  
772 )  
773 )  
774 )  
775 )  
776 )  
777 )  
778 )  
779 )  
780 )  
781 )  
782 )  
783 )  
784 )  
785 )  
786 )  
787 )  
788 )  
789 )  
790 )  
791 )  
792 )  
793 )  
794 )  
795 )  
796 )  
797 )  
798 )  
799 )  
800 )  
801 )  
802 )  
803 )  
804 )  
805 )  
806 )  
807 )  
808 )  
809 )  
810 )  
811 )  
812 )  
813 )  
814 )  
815 )  
816 )  
817 )  
818 )  
819 )  
820 )  
821 )  
822 )  
823 )  
824 )  
825 )  
826 )  
827 )  
828 )  
829 )  
830 )  
831 )  
832 )  
833 )  
834 )  
835 )  
836 )  
837 )  
838 )  
839 )  
840 )  
841 )  
842 )  
843 )  
844 )  
845 )  
846 )  
847 )  
848 )  
849 )  
850 )  
851 )  
852 )  
853 )  
854 )  
855 )  
856 )  
857 )  
858 )  
859 )  
860 )  
861 )  
862 )  
863 )  
864 )  
865 )  
866 )  
867 )  
868 )  
869 )  
870 )  
871 )  
872 )  
873 )  
874 )  
875 )  
876 )  
877 )  
878 )  
879 )  
880 )  
881 )  
882 )  
883 )  
884 )  
885 )  
886 )  
887 )  
888 )  
889 )  
890 )  
891 )  
892 )  
893 )  
894 )  
895 )  
896 )  
897 )  
898 )  
899 )  
900 )  
901 )  
902 )  
903 )  
904 )  
905 )  
906 )  
907 )  
908 )  
909 )  
910 )  
911 )  
912 )  
913 )  
914 )  
915 )  
916 )  
917 )  
918 )  
919 )  
920 )  
921 )  
922 )  
923 )  
924 )  
925 )  
926 )  
927 )  
928 )  
929 )  
930 )  
931 )  
932 )  
933 )  
934 )  
935 )  
936 )  
937 )  
938 )  
939 )  
940 )  
941 )  
942 )  
943 )  
944 )  
945 )  
946 )  
947 )  
948 )  
949 )  
950 )  
951 )  
952 )  
953 )  
954 )  
955 )  
956 )  
957 )  
958 )  
959 )  
960 )  
961 )  
962 )  
963 )  
964 )  
965 )  
966 )  
967 )  
968 )  
969 )  
970 )  
971 )  
972 )  
973 )  
974 )  
975 )  
976 )  
977 )  
978 )  
979 )  
980 )  
981 )  
982 )  
983 )  
984 )  
985 )  
986 )  
987 )  
988 )  
989 )  
990 )  
991 )  
992 )  
993 )  
994 )  
995 )  
996 )  
997 )  
998 )  
999 )  
1000 )  
1001 )  
1002 )  
1003 )  
1004 )  
1005 )  
1006 )  
1007 )  
1008 )  
1009 )  
1010 )  
1011 )  
1012 )  
1013 )  
1014 )  
1015 )  
1016 )  
1017 )  
1018 )  
1019 )  
1020 )  
1021 )  
1022 )  
1023 )  
1024 )  
1025 )  
1026 )  
1027 )  
1028 )  
1029 )  
1030 )  
1031 )  
1032 )  
1033 )  
1034 )  
1035 )  
1036 )  
1037 )  
1038 )  
1039 )  
1040 )  
1041 )  
1042 )  
1043 )  
1044 )  
1045 )  
1046 )  
1047 )  
1048 )  
1049 )  
1050 )  
1051 )  
1052 )  
1053 )  
1054 )  
1055 )  
1056 )  
1057 )  
1058 )  
1059 )  
1060 )  
1061 )  
1062 )  
1063 )  
1064 )  
1065 )  
1066 )  
1067 )  
1068 )  
1069 )  
1070 )  
1071 )  
1072 )  
1073 )  
1074 )  
1075 )  
1076 )  
1077 )  
1078 )  
1079 )  
1080 )  
1081 )  
1082 )  
1083 )  
1084 )  
1085 )  
1086 )  
1087 )  
1088 )  
1089 )  
1090 )  
1091 )  
1092 )  
1093 )  
1094 )  
1095 )  
1096 )  
1097 )  
1098 )  
1099 )  
1100 )  
1101 )  
1102 )  
1103 )  
1104 )  
1105 )  
1106 )  
1107 )  
1108 )  
1109 )  
1110 )  
1111 )  
1112 )  
1113 )  
1114 )  
1115 )  
1116 )  
1117 )  
1118 )  
1119 )  
1120 )  
1121 )  
1122 )  
1123 )  
1124 )  
1125 )  
1126 )  
1127 )  
1128 )  
1129 )  
1130 )  
1131 )  
1132 )  
1133 )  
1134 )  
1135 )  
1136 )  
1137 )  
1138 )  
1139 )  
1140 )  
1141 )  
1142 )  
1143 )  
1144 )  
1145 )  
1146 )  
1147 )  
1148 )  
1149 )  
1150 )  
1151 )  
1152 )  
1153 )  
1154 )  
1155 )  
1156 )  
1157 )  
1158 )  
1159 )  
1160 )  
1161 )  
1162 )  
1163 )  
1164 )  
1165 )  
1166 )  
1167 )  
1168 )  
1169 )  
1170 )  
1171 )  
1172 )  
1173 )  
1174 )  
1175 )  
1176 )  
1177 )  
1178 )  
1179 )  
1180 )  
1181 )  
1182 )  
1183 )  
1184 )  
1185 )  
1186 )  
1187 )  
1188 )  
1189 )  
1190 )  
1191 )  
1192 )  
1193 )  
1194 )  
1195 )  
1196 )  
1197 )  
1198 )  
1199 )  
1200 )  
1201 )  
1202 )  
1203 )  
1204 )  
1205 )  
1206 )  
1207 )  
1208 )  
1209 )  
1210 )  
1211 )  
1212 )  
1213 )  
1214 )  
1215 )  
1216 )  
1217 )  
1218 )  
1219 )  
1220 )  
1221 )  
1222 )  
1223 )  
1224 )  
1225 )  
1226 )  
1227 )  
1228 )  
1229 )  
1230 )  
1231 )  
1232 )  
1233 )  
1234 )  
1235 )  
1236 )  
1237 )  
1238 )  
1239 )  
1240 )  
1241 )  
1242 )  
1243 )  
1244 )  
1245 )  
1246 )  
1247 )  
1248 )  
1249 )  
1250 )  
1251 )  
1252 )  
1253 )  
1254 )  
1255 )  
1256 )  
1257 )  
1258 )  
1259 )  
1260 )  
1261 )  
1262 )  
1263 )  
1264 )  
1265 )  
1266 )  
1267 )  
1268 )  
1269 )  
1270 )  
1271 )  
1272 )  
1273 )  
1274 )  
1275 )  
1276 )  
1277 )  
1278 )  
1279 )  
1280 )  
1281 )  
1282 )  
1283 )  
1284 )  
1285 )  
1286 )  
1287 )  
1288 )  
1289 )  
1290 )  
1291 )  
1292 )  
1293 )  
1294 )  
1295 )  
1296 )  
1297 )  
1298 )  
1299 )  
1300 )  
1301 )  
1302 )  
1303 )  
1304 )  
1305 )  
1306 )  
1307 )  
1308 )  
1309 )  
1310 )  
1311 )  
1312 )  
1313 )  
1314 )  
1315 )  
1316 )  
1317 )  
1318 )  
1319 )  
1320 )  
1321 )  
1322 )  
1323 )  
1324 )  
1325 )  
1326 )  
1327 )  
1328 )  
1329 )  
1330 )  
1331 )  
1332 )  
1333 )  
1334 )  
1335 )  
1336 )  
1337 )  
1338 )  
1339 )  
1340 )  
1341 )  
1342 )  
1343 )  
1344 )  
1345 )  
1346 )  
1347 )  
1348 )  
1349 )  
1350 )  
1351 )  
1352 )  
1353 )  
1354 )  
1355 )  
1356 )  
1357 )  
1358 )  
1359 )  
1360 )  
1361 )  
1362 )  
1363 )  
1364 )  
1365 )  
1366 )  
1367 )  
1368 )  
1369 )  
1370 )  
1371 )  
1372 )  
1373 )  
1374 )  
1375 )  
1376 )  
1377 )  
1378 )  
1379 )  
1380 )  
1381 )  
1382 )  
1383 )  
1384 )  
1385 )  
1386 )  
1387 )  
1388 )  
1389 )  
1390 )  
1391 )  
1392 )  
1393 )  
1394 )  
1395 )  
1396 )  
1397 )  
1398 )  
1399 )  
1400 )  
1401 )  
1402 )  
1403 )  
1404 )  
1405 )  
1406 )  
1407 )  
1408 )  
1409 )  
1410 )  
1411 )  
1412 )  
1413 )  
1414 )  
1415 )  
1416 )  
1417 )  
1418 )  
1419 )  
1420 )  
1421 )  
1422 )  
1423 )  
1424 )  
1425 )  
1426 )  
1427 )  
1428 )  
1429 )  
1430 )  
1431 )  
1432 )  
1433 )  
1434 )  
1435 )  
1436 )  
1437 )  
1438 )  
1439 )  
1440 )  
1441 )  
1442 )  
1443 )  
1444 )  
1445 )  
1446 )  
1447 )  
1448 )  
1449 )  
1450 )  
1451 )  
1452 )  
1453 )  
1454 )  
1455 )  
1456 )  
1457 )  
1458 )  
1459 )  
1460 )  
1461 )  
1462 )  
1463 )  
1464 )  
1465 )  
1466 )  
1467 )  
1468 )  
1469 )  
1470 )  
1471 )  
1472 )  
1473 )  
1474 )  
1475 )  
1476 )  
1477 )  
1478 )  
1479 )  
1480 )  
1481 )  
1482 )  
1483 )  
1484 )  
1485 )  
1486 )  
1487 )  
1488 )  
1489 )  
1490 )  
1491 )  
1492 )  
1493 )  
1494 )  
1495 )  
1496 )  
1497 )  
1498 )  
1499 )  
1500 )  
1501 )  
1502 )  
1503 )  
1504 )  
1505 )  
1506 )  
1507 )  
1508 )  
1509 )  
1510 )  
1511 )  
1512 )  
1513 )  
1514 )  
1515 )  
1516 )  
1517 )  
1518 )  
1519 )  
1520 )  
1521 )  
1522

1 civil penalty. Plaintiff also seeks a permanent injunction against Defendant.

2 On August 14, 2007, the parties stipulated to and the Court granted a  
 3 Permanent Injunction Order. The Order stated that Defendant shall pay  
 4 disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty  
 5 pursuant to section 20(d) of the Securities Act and section 21(d)(3) of the  
 6 Exchange Act. Defendant agreed that he would be precluded from arguing that he  
 7 did not violate federal securities laws as alleged in the Complaint. The parties also  
 8 stipulated that the Court would determine the amount of disgorgement and civil  
 9 penalty on motion by Plaintiff. Accordingly, Plaintiff filed its instant Motion for  
 10 Summary Judgment (“Motion”) on October 22, 2007. On November 2, 2007,  
 11 Defendant filed a notice of non-opposition pursuant to Local Rule 7-9.

12 **II. FACTUAL BACKGROUND**

13 Because Defendant has not opposed Plaintiff’s Motion, the following facts  
 14 are deemed to be undisputed.

15 On approximately December 11, 2005, Defendant registered the Internet  
 16 domain named [www.thestockster.com](http://www.thestockster.com)<sup>1</sup> through a service that shielded his name  
 17 from publicly available registration information. (UF<sup>2</sup>, 1.) Defendant designed the  
 18 website, which was free to all visitors, to appear as if it offered objective  
 19 investment advice. (UF, 2.) A description on the main page of the website  
 20 claimed that the site “helps investors win at investing on the merits of radically  
 21 original thinking and an unbeatable track record of picking stocks with huge

---

22  
 23 <sup>1</sup> Defendant also registered [www.stockesteem.com](http://www.stockesteem.com), which he used from December 8,  
 24 2005 through December 15, 2005, at which time he began operating [thestockster.com](http://www.thestockster.com) website.  
 25 (UF, 35-45.) The design and purpose of [www.stockesteem.com](http://www.stockesteem.com) was nearly identical to that of  
 26 [www.thestockster.com](http://www.thestockster.com). (UF, 37-45.)

27 <sup>2</sup> The Court cites Plaintiff’s Separate Statement of Uncontroverted Facts (“UF”) in  
 28 support of its Motion for Summary Judgment.

1 potential.” (UF, 3.) Defendant uploaded daily stock recommendations to the  
 2 website, touting each pick as a “mega bonus buy.” (UF, 4.) Defendant posted only  
 3 “buy,” but never “sell” recommendations. (UF, 5.)

4 For each stock recommendation, Defendant included the current share price  
 5 and an allegedly misleading “target price.” (UF, 6.) The target prices, which were  
 6 always higher than the current trading prices, gave the impression that Defendant  
 7 had conducted a financial analysis of the recommend stocks. (UF, 7.) The website  
 8 included a “disclaimer” that described the site as an “independent research  
 9 company” that “published unbiased research.” (UF, 13.) However, contrary to the  
 10 above assertions, Defendant had no reasonable basis for the target prices and his  
 11 recommendations were biased in favor of stocks in which he held an interest and  
 12 planned to profit from undisclosed near-term sales. (UF, 8, 14).

13 There was another disclaimer on the website that included the statements  
 14 “[w]e own shares” and that “[o]fficers, directors, and employees of The Stockster  
 15 or the financial analysts mentioned, and members of their families *may* hold a  
 16 position[] and *may, from time to time*, trade in these securities for their own  
 17 accounts.” (Complaint at ¶¶ 13-14) (emphasis in Complaint). Plaintiff argues that  
 18 this statement in and of itself is misleading because Defendant actually did own the  
 19 securities before he posted the recommendations. (Id.) He also knew he owned  
 20 the stock and he had a present intent to sell his shares for profit as soon as the  
 21 recommendations led to an increase in the price of the shares. (Id.)

22 To bolster the website’s stock picking credibility further, Defendant posted  
 23 the following statement on the website: “We’ve brought you MSFT, GOOG, SIRI,  
 24 CMGI, JDSU, and others you’ve made a killing on.” (UF, 9.) However, this  
 25 assertion was false because Defendant never recommended Microsoft Corp.,  
 26 Google, Inc., Sirius Satellite Radio, Inc., CMGI, Inc., or JDS Uniphase Corp. (UF,  
 27 10.) In fact, most of the stocks recommended on the website from December 15,

1 2005 to March 30, 2006 were little known and thinly-traded “penny stocks.” (UF,  
 2 11.)

3 By early 2006, [www.thestockster.com](http://www.thestockster.com) began attracting a relatively large  
 4 number of visitors. (UF, 17.) The share price of the recommended stocks usually  
 5 rose as buyers, following the site’s recommendations, entered the market to  
 6 purchase shares of these stocks. (UF, 18.) Similarly, trading volume in a  
 7 recommended stock typically spiked after the pick was posted on the site. (UF,  
 8 19.) The trading volume and the share price of the recommended stock typically  
 9 declined when the website ended its recommendation of a stock and selected a new  
 10 stock as its “mega bonus buy.” (UF, 20.)

11 Between December 15, 2005 through March 20, 2006, Defendant  
 12 recommended approximately 60 stocks as “mega bonus buys” on the Stockster  
 13 website. (UF, 21.) Defendant typically bought shares of the recommended stocks  
 14 shortly before he posted the pick on the website. (UF, 23.) Defendant would then  
 15 typically begin selling his shares at the same time he continued to recommend that  
 16 visitors buy the stock. (UF, 25.) Defendant never changed the recommendation on  
 17 the website from “buy” to “sell.” (UF, 26.) Plaintiff argues that Defendant’s  
 18 failure to disclose his intent to sell his shares materially misled those website  
 19 visitors who bought shares based on Defendant’s alleged “unbiased” investment  
 20 advice. (UF, 29.) In short, Defendant was able to turn a quick profit at the  
 21 expense of the investors who followed the website’s advice.<sup>3</sup> (UF, 30.)

22 On approximately December 12, 2005, Defendant recommended Epic Media

---

23

24 <sup>3</sup> Defendant’s father, Nicholas Czuczko, Sr., and business partner, Epic Media’s Chief  
 25 Operating Officer, John Yeung, also traded stocks recommended on the website using advance  
 26 information about the recommendations. (UF, 31.) Defendant never disclosed his father’s or  
 27 Yeung’s trading practices or actual sales on the website. (UF, 32.) Plaintiff argues that  
 Defendant’s failure to disclose this information about his father and Yeung materially misled the  
 website visitors because the visitors expected “unbiased” investment advice. (UF, 33.)

1 stock – a penny stock – as a “mega bonus buy” on the stockesteem website. (UF,  
 2 44.) Defendant did not inform website visitors that he was an officer and director  
 3 of Epic Media, nor did he disclose that he owned approximately 58 percent of the  
 4 company’s outstanding shares. (UF, 45.) The price of Epic Media’s shares rose  
 5 nearly 36 percent following the recommendation on Defendant’s website. (UF,  
 6 46.) As a result of trading in Epic Media stock between December 8, 2005 and  
 7 December 14, 2005, Defendant made total profits of \$53,165. (UF, 49.)

8 In summary, Defendant used his website to recommend obscure stocks  
 9 whose prices are well known to be easily manipulated. (UF, 51.) Defendant  
 10 generally bought stock before he posted his buy recommendations on his website.  
 11 (UF, 58.) Defendant’s stock purchases caused the stock prices to rise. (UF, 59.)  
 12 Then, Defendant would recommend the stocks on the website. (UF, 56, 60.)  
 13 Because of his scheme, Defendant was able to sell his shares at higher prices. (UF,  
 14 56.) However, since the higher prices generally fell during and after Defendant  
 15 sold, many buyers suffered losses immediately or within a day or two if they  
 16 continued to hold their positions. (UF, 57.) Defendant earned total profits of at  
 17 least \$1,552,463 from his website scheme, calculated by adding the net profits of  
 18 \$53,165 Defendant earned from his trades of Epic Media together with the  
 19 \$1,499,298 in profits he earned from other trading during the period. (UF, 65.)

20 In addition, on September 11, 2006, after Plaintiff filed its Complaint in the  
 21 current action, Epic Media filed a certificate with the Securities and Exchange  
 22 Commission terminating its registration. (UF, 66.) On February 23, 2007, a  
 23 company named Liberty Presidential Investment Funds, Inc. issued a press release  
 24 announcing that it had begun to trade publicly under the symbol LPIF. (UF, 67.)  
 25 John Yeung, the former COO of Epic Media, was listed as the LPIF’s investor  
 26 relations contact. (UF, 69.) An online company snapshot of LPIF reveals that it  
 27 was formerly known as YouMee, Inc. and Epic Media, Inc. and that it is located at

1 the same address as that of Epic Media. (UF, 70.) Between February 23 and  
 2 March 15, 2007, Defendant purchased 400 shares of LPIF stock for \$90. (UF, 72.)  
 3 Between February 23 and March 15, 2007, Defendant's father earned  
 4 approximately \$19,000 by selling a total of 626,716 LPIF shares. (UF, 73.) In  
 5 addition to the activity surrounding LPIF, as of the November 19, 2007,  
 6 thestockster.com website was still up and running.

7 **III. LEGAL STANDARD**

8 Rule 56(c) requires summary judgment for the moving party when the  
 9 evidence, viewed in the light most favorable to the nonmoving party, shows that  
 10 there is no genuine issue as to any material fact, and that the moving party is  
 11 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Tarin v. County of*  
 12 *Los Angeles*, 123 F.3d 1259, 1263 (9th Cir. 1997).

13 The moving party bears the initial burden of establishing the absence of a  
 14 genuine issue of material fact. *Celotex Corp v. Catrett*, 477 U.S. 317, 323-24  
 15 (1986). That burden may be met by “‘showing’ – that is, pointing out to the district  
 16 court – that there is an absence of evidence to support the nonmoving party's case.”  
 17 *Id.* at 325. Once the moving party has met its initial burden, Rule 56(e) requires  
 18 the nonmoving party to go beyond the pleadings and identify specific facts that  
 19 show a genuine issue for trial. *Id.* at 323-34; *Anderson v. Liberty Lobby, Inc.*, 477  
 20 U.S. 242, 248 (1968). “A scintilla of evidence or evidence that is merely colorable  
 21 or not significantly probative does not present a genuine issue of material fact.”  
 22 *Addisu v. Fred Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000).

23  
 24 **IV. DISCUSSION**

25 Because Defendant does not oppose Plaintiff's Motion, the Court takes the  
 26  
 27  
 28

1 facts as true as presented by Plaintiff.<sup>4</sup> Therefore, using the facts as alleged in the  
 2 Complaint and in the documents supporting Plaintiff's Motion, the Court will  
 3 exam whether Plaintiff has proven each of its three claims for relief.

4 **1. Plaintiff's Claims One and Two: Violations of Section 10(b) of the  
 5 Exchange Act, Rule 10b-5, and Section 17(a) of the Securities Act**

6 "Section 17(a)(1) of the Securities Act, Section 10(b) of the Securities and  
 7 Exchange Act, and Rule 10b-5 prohibit fraudulent conduct or practices in  
 8 connection with the offer of sale of securities, including making a material  
 9 misstatement or omission *in connection with* the offer or sale of a security by  
 10 means of interstate commerce." *S.E.C. v. Rubera*, 350 F.3d 1084, 1094 (9th Cir.  
 11 2003) (citing *S.E.C. v. Dain Rauschers, Inc.*, 254 F.3d 852, 856 (9th Cir. 2001))  
 12 (emphasis added). Scienter, which is a "mental state embracing the intent to  
 13 deceive, manipulate or defraud," is required to establish securities fraud. *Ernst &*  
 14 *Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). The Ninth Circuit has held that  
 15 recklessness satisfies the scienter requirement. *See Hollinger v. Titan Capital*  
 16 *Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990). Circumstantial evidence can  
 17 support a strong inference of scienter. *See DSAM Global Value Fund v. Altris*  
 18 *Software, Inc.*, 288 F.3d 385, 388-89 (9th Cir. 2002); *see also In re Silicon*  
 19 *Graphics Inc. Securities Litig.*, 183 F.3d 970, 974-75 (9th Cir. 1999).

20 Here, Plaintiff alleges that Defendant violated the above-mentioned statutes  
 21 and regulations because he made materially false statements with the requisite  
 22 scienter. Specifically, Plaintiff argues that Defendant recommended stocks on his  
 23 website without having a reasonable basis for the recommendation. Further,  
 24 Defendant hailed his recommendations as "unbiased" when in fact he had a biased

---

25 <sup>4</sup> In Defendant's Answer to Plaintiff's Complaint, he invoked his Fifth Amendment  
 26 right against self-incrimination. A witness may invoke the Fifth Amendment in a civil case, but  
 27 the refusal to answer permits the trier of fact to infer that the answer would have been favorable  
 to the party propounding the question. *Baxter v. Palmigiano*, 425 U.S. 308, 316-18 (1976).

1 interest in recommending certain stocks, because he would sell his stocks at a  
 2 profit once the website visitors began buying. Plaintiff also contends that  
 3 Defendant misled website visitors by noting that he had previously recommended  
 4 companies such as Microsoft and Google when Defendant knew that his site never  
 5 recommended such stocks. Defendant also presented visitors with a “target price”  
 6 for the stocks he recommended, but actually had no basis for such a prediction.

7 In addition, Defendant placed a disclaimer on his site that stated “[o]fficers,  
 8 directors, and employees of The Stockster or the financial analysts mentioned, and  
 9 members of their families *may* hold a position[] and *may, from time to time*, trade  
 10 in these securities for their own accounts.” (Complaint at ¶¶ 13-14) (emphasis in  
 11 Complaint). In the case of *S.E.C. v. Blavin*, the Sixth Circuit examined an  
 12 investment newsletter with a similar disclaimer. 760 F.2d 706 (6th Cir. 1985).  
 13 The company in *Blavin* disclaimed that they “may trade for [their] own account.”  
 14 *Id.* at 708. The court held that this statement was “false and misleading.” *Id.* at  
 15 711. The court reasoned that the disclaimer:

16 created an impression that [the publisher of the newsletter] was an  
 17 investment company with numerous employees whose investments were  
 18 not all known to management, when in fact [the company] was a sole  
 19 proprietorship of [the defendant], who had invested [in] the publicly  
 available stock of companies he recommended. In this factual context,  
 a disclaimer that the investment advisor “may” trade in recommended  
 securities for its own account is itself a material misstatement.

20 *Blavin*, 760 F.2d at 711.

21 Similarly, here, Defendant’s disclaimer gave the impression that there were  
 22 numerous employees at [www.thestockster.com](http://www.thestockster.com) when it is the Court’s  
 23 understanding that Defendant was one of the only employees maintaining the  
 24 website. In addition, Defendant’s assertion that employees of [thestockster.com](http://thestockster.com)  
 25 “may” trade in the recommended securities is itself a material misstatement  
 26 because Defendant *knew* that he, his father, and his business partner *did* regularly  
 27 trade in the stocks and *had a biased interest* in the recommended stocks.

1 Therefore, Plaintiff has satisfied its burden by showing that Defendant made  
 2 materially false statements in connection with the sale of securities.

3 Plaintiff must also demonstrate that Defendant acted with the requisite  
 4 scienter. To prevail on this element, Plaintiff must show that Defendant either  
 5 knowingly or recklessly made the materially false statements discussed above. It is  
 6 evident that Defendant made the statements on his website to attract visitors who  
 7 would purchase stock, which would in turn lead to profits for Defendant. Through  
 8 circumstantial evidence, the Court can clearly infer that Defendant knew that the  
 9 statements were materially false and that he had the requisite scienter to be found  
 10 liable for securities fraud. Accordingly, Plaintiff has proven claims one and two of  
 11 its Complaint.

12 **2. Plaintiff's Claim Three: Violation of Section 16(a) of the  
 13 Exchange Act and Rule 16a-3**

14 Section 16 of the Securities and Exchange Act of 1934 contains two separate  
 15 provisions. Section 16(a) requires that all officers, directors, and large  
 16 shareholders report to the SEC any changes in their "beneficial ownership" of  
 17 equity securities of their corporations. Section 16(b) imposes liability on such  
 18 "insiders" for short-swing transactions in such securities. 15 U.S.C. § 78p(a, b).  
 19 Rule 16a-3 details the reporting of transactions and holdings that is required under  
 20 section 16(a).

21 Here, Plaintiff alleges that in 2005 and 2006 Defendant was an officer and  
 22 director of Epic Media and a beneficial owner of 58 percent of Epic Media  
 23 common stock. From about July 2005 through March 2006, Defendant failed to  
 24 file statements accurately reflecting changes in his beneficial ownership of Epic  
 25 Media common stock. Therefore, taking the facts in Plaintiff's Complaint as true,  
 26 Defendant has violated Section 16(a) of the Exchange Act and Rule 16a-3.

27 **3. Damages**

1                   a.     Disgorgement of Profits

2                   “Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and  
 3 to deter others from violating securities laws by making violations unprofitable.”  
 4 *S.E.C. v. First Pac. Bancorp*, 142 F.3d 1186, 1191-92 (9th Cir. 1998). In support  
 5 of its disgorgement request, Plaintiff relies primarily on the expert opinion of  
 6 Professor Lawrence Harris. Professor Harris calculated the profits that Defendant  
 7 made on his trades by subtracting the summed dollar value of all his sales from the  
 8 summed dollar value of all his purchases and concluded that Defendant’s trading  
 9 profits amounted to \$1,499,298.<sup>5</sup> Harris Dec. Ex. A at 16, ¶ 51. In addition,  
 10 Plaintiff calculated that Defendant made net profits of \$53,165 from his sales of  
 11 Epic Media; this stock was excluded from Professor Harris’ calculation.  
 12 Accordingly, under the above authorities, the Court Orders that Defendant  
 13 disgorge a total of \$1,552,463 in ill-gotten gains from his stock manipulation  
 14 scheme.

15                   b.     Prejudgment Interest

16                   Plaintiff Commission has calculated prejudgment interest from April 1,  
 17 2006, the first day of the month after Defendant Czuczko ceased trading stocks  
 18 promoted on his website, to November 1, 2007, the first day of the month in which  
 19 this Motion was scheduled to be heard. *See S.E.C. v. First Jersey Secs.*, 101 F.3d  
 20 1450, 1477 (2nd Cir. 1996) (affirming payment of prejudgment interest from time

---

21  
 22                   <sup>5</sup> At the November 19, 2007 hearing on this Motion, the Court instructed Plaintiff to  
 23 submit a supplemental brief to detail the exact method of calculation used to reach the  
 24 \$1,499,298 in profits attributed to Defendant Czuczko’s fraudulent scheme. On December 3,  
 25 2007, Plaintiff submitted a supplemental declaration of Lawrence Harris. Professor Harris  
 26 included a table indicating that the total value of Czuczko’s profits was \$1,499,298. The total  
 27 value of Czuczko’s sales (\$5,933,244) exceeded the total value of his purchases (\$4,433,946).  
 The difference of \$1,499,298 represents Czuczko’s total trading profits. The Court finds that  
 Plaintiff’s supplemental briefing sufficiently establishes the profits that Czuczko earned from his  
 fraudulent stock manipulation scheme.

1 of defendants' unlawful gains to entry of judgment), *cert. denied*, 522 U.S. 812  
 2 (1997); Anderson Dec. ¶ 12 & Ex. 12. In this Circuit, prejudgment interest may be  
 3 calculated using the method established for calculating interest on judgment,  
 4 pursuant to 28 U.S.C. § 1961. *See Blanton v. Anzalone*, 760 F.2d 989, 993 (9th  
 5 Cir. 1985); *Western Pacific Fisheries, Inc. v. SS President Grant*, 730 F.2d 1280,  
 6 1288-89 (9th Cir. 1984).

7 Employing this method, Plaintiff seeks prejudgment interest in the amount  
 8 of \$121,105.64. The Court agrees with Plaintiff's reasoning and calculation in  
 9 determining prejudgment interest.

10       c.     Civil Penalty

11       As discussed above, the Court finds that Defendant has violated federal  
 12 securities laws as alleged in Plaintiff's Complaint. Due to Defendant's violations,  
 13 Plaintiff asks this Court to impose civil penalties against Defendant pursuant to the  
 14 Securities Enforcement Remedies and Penny Stock Reform Act of 1990, 15 U.S.C.  
 15 § 78u(d)(3) ("the Remedies Act").<sup>6</sup> Plaintiff Commission suggests that each of

---

16       <sup>6</sup> 15 U.S.C. § 78u(d)(3) provides as follows:

17       (A) Authority of Commission -

18       Whenever it shall appear to the Commission that any person has violated any provision  
 19 of this chapter, the rules or regulations thereunder, ... the Commission may bring an  
 20 action in a United States district court to seek, and the court shall have jurisdiction to  
 21 impose, upon a proper showing, a civil penalty to be paid by the person who committed  
 22 such violation.

23       (B) Amount of penalty -

24       (i) First tier-The amount of the penalty shall be determined by the court in light of the  
 25 facts and circumstances. For each violation, the amount of the penalty shall not exceed  
 26 the greater of (I) \$5,000 for a natural person or \$50,000 for any other person, or (II) the  
 27 gross amount of pecuniary gain to such defendant as a result of the violation.

28       (ii) Second tier-Notwithstanding clause (i), the amount of penalty for each such violation  
 29 shall not exceed the greater of (I) \$50,000 for a natural person or \$250,000 for any other  
 30 person, or (II) the gross amount of pecuniary gain to such defendant as a result of the  
 31 violation, if the violation described in subparagraph (A) involved fraud, deceit,  
 32 manipulation, or deliberate or reckless disregard of a regulatory requirement.

33       (iii) Third tier-Notwithstanding clauses (i) and (ii), the amount of penalty for each such

1 Defendant's violations should fall within the third tier of civil penalties available  
 2 under the Remedies Act. *See* 15 U.S.C. § 78u(d)(3)(B)(iii) (allowing, for each  
 3 violation, a \$100,000 penalty against a natural person if the violation involved  
 4 fraud/manipulation and created a significant risk of substantial losses to other  
 5 persons). Penalties can be assessed for each separate violation, which courts may  
 6 measure either by the number of instances of volatile conduct or by each separate  
 7 claim for which the defendant is found liable. *See, e.g., S.E.C. v. Henke*, 275  
 8 F.Supp.2d 1075, 1084 (N.D. Cal. 2003) (applying the third tier and multiplying  
 9 \$100,000 by the number of causes of action alleged in the complaint); *S.E.C. v.*  
 10 *Kenton Capital Ltd.*, 69 F.Supp.2d 1, 17 (D.D.C. 1998) (applying third tier  
 11 penalties and multiplying by the number of persons harmed by the defendant's  
 12 fraud).

13 Here, the Court construes Defendant Czuczko's overall stock manipulation  
 14 scheme as one violation under 15 U.S.C. § 78u(d)(3)(B)(iii). Therefore, the Court  
 15 will impose an across-the-board, third-tier civil penalty of \$100,000.

16  
 17  
 18

19 **V. CONCLUSION**

20 After careful examination of the evidence presented, the Court finds that  
 21 Defendant is liable for Claims One, Two, and Three as alleged in Plaintiff's

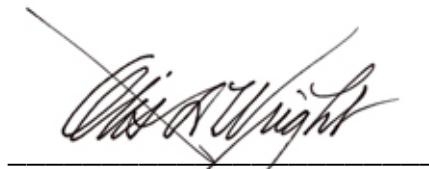
22  
 23  
 24 violation shall not exceed the greater of (I) \$100,000 for a natural person or \$500,000 for  
 25 any other person, or (II) the gross amount of pecuniary gain to such defendant as a result  
 26 of the violation, if-(aa) the violation described in subparagraph (A) involved fraud,  
 deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and  
 27 (bb) such violation directly or indirectly resulted in substantial losses or created a  
 28 significant risk of substantial losses to other persons.

1 Complaint. Therefore, Plaintiff's Motion for Summary Judgment is GRANTED.  
2 The Court hereby Orders that Defendant disgorge a total of \$1,552,463 in ill-gotten  
3 gains from his stock manipulation scheme plus prejudgment interest thereon in the  
4 amount of \$121,105.64, calculated for the period April 1, 2006 through November  
5 1, 2007 at the weekly average one-year constant maturity Treasury yield rate in  
6 effect closest in time to April 1, 2006. Defendant is also ordered to pay \$100,000  
7 as a civil penalty.

8  
9 JUDGMENT: Based on the foregoing, judgment is hereby entered in favor  
10 of Plaintiff.

11  
12 IT IS SO ORDERED.

13 DATED: December 5, 2007  
14



15  
16  
17 Otis D. Wright II  
18 United States District Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28