

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 07-61526-CIV-ALTONAGA/Goodman**

**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**JEFFREY BROOKS**, as Personal Representative  
of the Estate of David H. Brooks,

Defendant.

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**FINAL JUDGMENT ORDER**

**THIS CAUSE** came before the Court on Plaintiff, Securities and Exchange Commission's Motion to Approve Consent to Final Judgment by Jeffrey Brooks, as Personal Representative of the Estate of David H. Brooks [ECF No. 169], filed November 13, 2018. D. David Cohen, as amicus curiae, filed his Response [ECF No. 176] on November 27, 2018; and Plaintiff filed its Reply [ECF No. 177] on December 4, 2018. Mr. Cohen and the parties presented arguments at a fairness hearing held on December 7, 2018 [ECF No. 180].<sup>1</sup> The Court has carefully considered the parties' submissions, arguments presented at the fairness hearing, and applicable law.

The law strongly favors consent judgments with government agencies. *See SEC v. Citigroup Glob. Mkts., Inc.*, 752 F.3d 285, 293 (2d Cir. 2014).<sup>2</sup> "[T]he proper standard for reviewing a proposed consent judgment involving an enforcement agency requires that the

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<sup>1</sup> In its July 12, 2018 Order denying Mr. Cohen's Motion to Intervene, the Court gave Mr. Cohen the opportunity to file a response to the Motion and address the Court as amicus curiae prior to approval of the parties' proposed settlement agreement. (*See* [ECF No. 155] 11).

<sup>2</sup> The parties agree *Citigroup Global Markets, Inc.* is the leading case regarding the standard of review applicable to SEC settlements. (*See* Reply 2).

district court determine whether the proposed consent decree is fair and reasonable . . . .” *Id.*, 752 F.3d at 294 (alteration added); *see also United States v. Miami-Dade Cty., Fla.*, No. 12-24400-CIV, 2014 WL 7534027, at \*2 (S.D. Fla. Apr. 10, 2014) (limiting the court’s role to “determining whether the terms of the consent decree are not unlawful, unreasonable, or inequitable.” (internal quotation marks and citation omitted)).

A district court need not determine whether a proposed SEC consent decree is “adequate.” *See Citigroup Glob. Mkts., Inc.*, 752 F.3d at 294. Rather, in evaluating a settlement for fairness and reasonableness, the Court should assess four factors: (1) the basic legality of the decree; (2) whether the terms of the decree, including its enforcement mechanism, are clear; (3) whether the consent decree reflects a resolution of the actual claims in the complaint; and (4) whether the consent decree is tainted by improper collusion or corruption of some kind. *See id.* at 294–95 (citations omitted). Mindful of these principles, the Court has reviewed the proposed consent judgment and finds it fair and reasonable.

In his Response, Mr. Cohen argues the SEC’s consent judgment does not meet these standards because (1) the terms of the judgment are unclear; (2) the judgment amount is irrational; and (3) collusion exists. (*See generally* Resp.). In asserting these objections, Mr. Cohen seeks review of the judgment that goes far beyond the bounds of the Court’s limited role in approving the consent decree. The Court will not — nor is it required to — assess the adequacy of the specific terms of the agreement. *See Citigroup Glob. Mkts., Inc.*, 752 F.3d at 295 (“The primary focus of the inquiry . . . should be on ensuring the consent decree is procedurally proper, using objective measures similar to the [four] factors set out above, taking care not to infringe on the S.E.C.’s discretionary authority to settle on a particular set of terms.”) (alterations added).

The Court has carefully considered the consent judgment in light of the four *Citigroup* factors and is not persuaded by Mr. Cohen's contention the terms of the agreement are facially unclear, nor is it persuaded by his unsupported assertion collusion is present. Regarding Mr. Cohen's challenge to the judgment amount, as stated above, the Court will not evaluate the adequacy of any specific terms of the agreement.

The parties agree the law favors consent judgments and district court review of those judgments "is and ought to be highly deferential to the agency's determinations." (Resp. 7); *see also Citigroup Glob. Mkts., Inc.*, 752 F.3d at 293–94. There is a strong presumption in favor of approval of a consent decree, and "[a]ny party objecting to a decree has the heavy burden of demonstrating the decree is unreasonable." *Miami-Dade Cty., Fla.*, 2014 WL 7534027, at \*2 (alteration added; citation omitted). Indeed, "[a]bsent a substantial basis in the record for concluding that the proposed consent decree does not meet [the fairness and reasonableness] requirements, the district court is required to enter the order." *Citigroup Glob. Mkts., Inc.*, 752 F.3d at 294 (alterations added).


Mr. Cohen has not met his "heavy burden" of demonstrating the SEC's proposed consent judgment is unreasonable or unfair. Thus, the Court finds good cause exists for entry of the Consent Final Judgment. Accordingly, it is

**ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion to Approve Consent to Final Judgment [**ECF No. 169**] is **GRANTED**.
2. Defendant is liable to the Commission for disgorgement of \$117,500,000, representing profits gained as a result of the conduct alleged in the Amended Complaint, together with prejudgment interest in the amount of \$ 24,500,000, for a

- total of \$142,000,000.
3. Defendant shall reimburse SS Body Armor I, Inc. f/k/a Point Blank Solutions, Inc. f/k/a DHB Industries Inc. (“DHB”) \$142,000,000 for bonuses and profits received from DHB stock sales, pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243(a)].
  4. The obligations set forth in paragraphs 2 and 3 are deemed satisfied by the entry of the Consent Final Decree of Forfeiture and Order for Delivery [Docket Entry No. 216] in the matter *United States of America v. All Assets Listed on Schedule I Attached Hereto and All Proceeds Traceable Thereto*, No. 2:10cv4750 (E.D.N.Y.), which provides for the forfeiture of approximately \$142,000,000 of assets.
  5. The Consent is incorporated herein with the same force and effect as if fully set forth herein, and Defendant shall comply with all of the undertakings and agreements set forth therein.
  6. The Court retains jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

**DONE AND ORDERED** in Miami, Florida, this 11th day of December, 2018.

  
**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record