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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MARY PATTEN,
VALENVALLS INVESTMENT
CORPORATION, LTD.,
SCOTT HAMILTON, and
HAROLD MILLER,

Defendants.

Civil Docket No. 03-CV-
8619 DSF (JLTx)

[PROPOSED] FINDINGS,
ORDER AND FINAL
JUDGMENT
REGARDING
DISGORGEMENT,
PREJUDGMENT
INTEREST, AND THIRD-
TIER CIVIL MONEY
PENALTIES AGAINST
MARY PATTEN AND
VALENVALLS
INVESTMENT
CORPORATION, LTD.

Hearing: June 20, 2005
1:30 p.m.

Courtroom 840

Honorable Dale S. Fisher

165

cc: Fiscal

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 23 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

1 On February 7, 2005, the Court issued its Order Granting Securities
2 and Exchange Commission's ("Commission") Application For Default
3 Judgment Against Mary Patten and Valenvalls Investment Corporation, Ltd.
4 ("Order"). In the Order the Court ordered the defendants to disgorge ill-
5 gotten gains, pay prejudgment interest on the amount ordered to be
6 disgorged, and to pay a third-tier civil money penalty. Order, pp. 15-16. On
7 April 13, 2005, the Court ordered the Commission "to file a proposed order
8 setting forth the proper amount of disgorgement, and a proposed order
9 setting forth the proper disposition of such funds, and any documents
10 necessary for the Court to determine the validity of its requests, on or before
11 April 29, 2005."
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16 The Commission, pursuant to the Court's April 13, 2005 Order, has
17 now moved for an Order directing Patten and Valenvalls to pay
18 \$3,357,427.90 in disgorgement, prejudgment interest of \$1,480,110.47 on
19 that amount, and civil money penalties of \$110,000 by Patten and \$550,000
20 by Valenvalls.
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23 The Court being fully advised, having read the Commission's
24 Memorandum of Law and other submissions to the Court on the merits of the
25 action, and there being no just reason for delay,
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THE COURT HEREBY FINDS AS FOLLOWS:

FINDINGS OF FACT

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4 1. On February 7, 2005, this Court granted the Plaintiff Securities
5 and Exchange Commission's ("Commission") motion for a permanent
6 injunction: (1) prohibiting defendants Patten and Valenvalls from violating
7 the anti-fraud and securities registration provisions of the federal securities
8 laws; (2) ordering the defendants to disgorge all ill-gotten gains and to pay
9 prejudgment interest; and (3) ordering the defendants to pay ^{third-tier DS} ~~the maximum~~
10 civil money penalties. In its order, the Court directed the Commission to
11 submit for the Court's consideration a proposed order setting forth the proper
12 amounts of disgorgement, prejudgment interest and civil money penalties.
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16 2. The Commission has now submitted its recommendation that the
17 defendants be jointly and severally liable to pay disgorgement of
18 \$3,357,427.90 and prejudgment interest of \$1,480,110.47, and that civil
19 money penalties in the amount of \$110,000 be assessed against Patten and
20 \$550,000 be assessed against Valenvalls.
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23 3. As this Court has found in its Order of February 7, 2005,
24 Defendants Patten and Valenvalls blatantly defrauded the victims of the
25 fraud. Patten and Valenvalls actively participated in a scheme with the other
26 defendants in which material misrepresentations and omissions of material
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1 fact were made in connection with the offer and sale of securities to potential
2 investors. The Court specifically found that Patten and Valenvalls
3 misrepresented to potential investors in connection with the offer or sale
4 of the securities that:
5

6 (a) investors would receive individual accounts at Valenvalls,
7 described as an 'international financeria' that could trade bonds,
8 currency, real estate, and securities;
9

10 (b) Valenvalls would pay investors a 20 percent return on their
11 investment; and
12

13 (c) Valenvalls would provide the potential investors with a guarantee
14 of principal.
15

16 4. Moreover, the Court found that Patten and Valenvalls sent
17 investors account statements falsely stating that the investors' funds
18 were earning 20 percent in individual Valenvalls accounts when, in fact,
19 Patten had converted most of the investors' funds to her personal use
20 without informing investors or obtaining their consent.
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22 5. The defendants Patten and Valenvalls have essentially ignored
23 the proceedings in this Court, not provided any defense for their actions, and
24 have shown no remorse for their actions.
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1 6. The defendants Patten and Valenvalls have obtained \$5,100,000
2 from the victims of their fraudulent actions, but were forced to return
3 \$1,665,000 to the victims in actions brought against them and their affiliates.
4
5 Consequently, the victims of this scheme have unreimbursed losses of
6 \$3,357,427.90 that had been diverted fraudulently to Patten's owns
7 purposes.
8

9 7. The amount of prejudgment interest on \$3,357,427,90 of ill-
10 gotten gains is \$1,480,110.47.
11

12 8. The Commission has recommended that third-tier civil money
13 penalties of \$110,000 be imposed on Patten and \$550,000 be imposed on
14 Valenvalls.
15

16 CONCLUSIONS OF LAW

17 Disgorgement

18 1. As the Court ruled in its February 7, 2005 Order (paragraph 7
19 of its Conclusions of Law), this Court may order disgorgement of ill-gotten
20 gains in Commission enforcement actions. *See SEC v. First Pacific*
21 *Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998); *SEC v. Rind*, 991 F.2d 1486,
22 1493 (9th Cir. 1993). In addition, as this Court also determined in its
23 February 7, 2005 Order (paragraph 7 of its Conclusions of Law), the amount
24 of disgorgement that should be order is "an amount that is a reasonable
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1 approximation of the profits causally connected to the violation.” *First*
2 *Pacific Bancorp*, 142 F.3d at 1192 n.6.

3
4 2. This Court has broad equity powers to order the disgorgement
5 of "ill-gotten gains" obtained through Patten and Valenvalls violation of the
6 securities laws. *SEC v. First Pacific Bancorp*, 142 F.3d at 1191. As the
7 Ninth Circuit has recognized, disgorgement is designed to deprive a
8 wrongdoer of unjust enrichment, and to deter others from violating securities
9 laws by making violations unprofitable. *SEC v. First Pacific Bancorp*, 142
10 F.3d at 1191; *SEC v. Rind*, 991 F.2d at 1491.

11
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13 3. “[W]here two or more individuals or entities collaborate or
14 have a close relationship in engaging in the violations of the securities laws,
15 they have been held jointly and severally liable for the disgorgement of
16 illegally obtained proceeds.” *SEC v. First Pacific Bancorp*, 142 F.3d at
17 1191-92. The Court is not required to trace every dollar of the proceeds
18 fraudulently obtained. The amount ordered to be disgorged needs to be only
19 a reasonable approximation of profits causally connected to the violation.
20 *SEC v. First Pacific Bancorp*, 142 F.3d at 1192 n.6.

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24 4. In this case, holding Patten and Valenvalls jointly and severally
25 liable for the \$3,357,427.90 illegally obtained from the investors and not
26 repaid is appropriate. Patten played a crucial role in directing the illegal
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1 gotten funds to the Valenvalls bank account. Valenvalls profited from the
2 deposit of the funds in its account, and Patten benefited from diverting the
3 investors' funds from the Valenvalls account to her own purposes in
4 violation of the trust placed in her by the investors. Patten, as sole owner of
5 Valenvalls, and Valenvalls clearly enjoyed a "close relationship" with each
6 other. Therefore, it clearly appropriate to hold them jointly and severally
7 liable for their violations of the securities laws.
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11 Prejudgment Interest

12 5. As this Court also ruled in its February 7, 2005 Order
13 (paragraph 8 Conclusions of Law), the Commission is entitled to
14 prejudgment interest on the disgorged amount to ensure that the wrongdoer
15 does not profit from the illegal activity. *SEC v. Manor Nursing Centers,*
16 *Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972); *SEC v. Cross Fin. Servs., Inc.*, 908
17 F. Supp. 718, 734 (C.D. Cal. 1995). The post-judgment interest rate
18 mandated by 28 U.S.C. § 1961 is the appropriate rate at which to calculate
19 pre-judgment interest in this case. *See Western Pacific Fisheries, Inc. v. S.*
20 *S. President Grant*, 730 F.2d 1280, 1289 (9th Cir. 1984).
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24 6. The amount of prejudgment interest calculated in accordance
25 with the guidance in 28 U.S.C. § 1961 is \$1,480,110.47.
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Civil Money Penalties

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3 7. As the Court recognized in its February 7, 2005 Order (paragraph
4 9 Conclusions of Law), "Patten's and Valenvalls' violation were egregious,
5 recurrent, and involved a high degree of scienter." Therefore, their actions
6 warrant the imposition of a third-tier civil money penalty, which in this case
7 may be \$110,000 per violation against an natural person (Patten) and \$550,000
8 per violation against another person (Valenvalls). See Exchange Act §
9 21(d)(B)(iii) as adjusted by 17 C.F.R. § 201.1001 (raising third tier penalties
10 to \$110,000 per violation for natural persons and \$550,000 per violation for
11 other persons).
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15 **Disgorgement Deadline**

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17 9. An action for disgorgement in Commission actions is equitable in
18 nature. *SEC v. Rind*, 991 F.2d at 1493; see also *SEC v. Lipson*, 278 F.3d 656,
19 662 (7th Cir. 2002). Since a disgorgement order is "an injunction in the
20 public interest," a court can enforce that order with its contempt powers.
21 *SEC v. Huffman*, 996 F.2d 800, 802-803 (5th Cir. 1993); *SEC v. AMX*,
22 *International, Inc.*, 7 F.3d 71, 72-73 (5th Cir. 1993).
23
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25 10. A deadline for payment of disgorgement is necessary and
26 appropriate in this case because it provides clear and convincing evidence
27 whether a defendant has (or has not) complied with this Court's order by
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1 paying the disgorgement amount. *See, e.g., SEC v. Deyon*, 977 F. Supp.
2 510, 519 (D. Me. 1997), *aff'd* 201 F.3d 428 (1st Cir. 1998) and *SEC v.*
3 *Phoenix Telecom, L.L.C.*, 231 F. Supp. 2d 1223, 1226 (N.D. Ga., 2001);
4 *SEC v. Freeman*, 290 F. Supp. 2d 401, 407-08 (S.D.N.Y. 2003); *SEC v.*
5 *Musella*, 818 F. Supp. 600, 604 (S.D.N.Y. 1993).
6
7

8 11. The Court therefore concludes that the Commission's request
9 that the Court's order include a 30 day time period for Patten and Valenvalls
10 to comply with its order to pay disgorgement and prejudgment interest is
11 appropriate in the circumstances.
12

13 Distribution Plan

14 12. The Commission has broad discretion in fashioning, and the
15 Court in authorizing, distribution plans for funds like the disgorgement funds
16 in this case. *SEC v. Certain Unknown Purchasers*, 817 F.2d 1018, 1020 (2d
17 Cir. 1987), cert. denied, 484 U.S. 1060 (1988); *SEC v. Levine*, 881 F.2d
18 1165, 1182 (2d Cir. 1989); *In re Drexel Burnham Lambert Group, Inc.*, 995
19 F.2d 1138, 1146 (2d Cir. 1993). Accordingly, the Commission has
20 requested that all moneys be paid to the registry of the Court to be placed in
21 an interest bearing account by the Clerk. The Court has concluded that this
22 approach is not only necessary, but appropriate in the circumstances of this
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1 case where the total amount of funds available for distribution is not
2 currently clear.

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4 **THEREFORE,**

5 **I.**

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED**
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8 **THAT** defendant Patten and Valenvalls are jointly and severally liable for
9 disgorgement of \$3,357,427.90, representing the net profits gained as a
10 result of the conduct alleged in the Complaint, together with prejudgment
11 interest thereon in the amount of \$1,480,110.47, and defendant Patten is
12 liable for a civil money penalty of \$110,000 and defendant Valenvalls is
13 liable for a civil money penalty of \$550,000 pursuant to Exchange Act §
14 21(d)(B)(iii) as adjusted by 17 C.F.R. 201.1001 (raising third-tier penalties
15 to \$110,000 per violation for natural persons and \$550,000 per violation for
16 other persons). Each Defendant shall ^{satisfy by D&P} its obligations by paying the amounts
17 ordered within thirty (30) calendar days of the date of this Judgment and
18 Order to the Clerk of this Court, together with a cover letter identifying
19 themselves (Mary Patten and Valenvalls Investment Corporation, Ltd.) as
20 defendants in this action; setting forth the title and civil action number of
21 this action and the name of this Court; and specifying that payment is made
22 pursuant to this Final Judgment. The defendants shall simultaneously
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1 transmit photocopies of such payments and letters to the Commission's
2 counsel in this action. By making these payments, Defendants relinquish all
3 legal and equitable rights, titles, and interests in such funds, and no part of
4 the funds shall be returned to the defendants. Defendants shall pay post-
5 judgment interest on any delinquent amounts pursuant to 28 USC §1961.
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8 **II.**

9 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
10 **DECREEED THAT** the Clerk shall deposit the funds into an interest bearing
11 account. These funds, together with any interest and income earned thereon
12 (collectively, the "Fund"), shall be held by the Clerk until further order of
13 the Court. In accordance with 28 U.S.C. §1914 and the guidelines set by the
14 Director of the Administrative Office of the United States Courts, the Clerk
15 is directed, without further order of this Court, to deduct from the income
16 earned on the money in the Fund a fee equal to ten percent of the income
17 earned on the Fund. Such fee shall not exceed that authorized by the
18 Judicial Conference of the United States.
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23 The Commission may by motion propose a plan to distribute the Fund
24 subject to the Court's approval. Such a plan may provide that the Fund shall
25 be distributed pursuant to the Fair Fund provisions of Section 308(a) of the
26 Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund
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CONFIDENTIAL

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distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, further benefit by offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND
DECREED THAT the Court shall retain jurisdiction of this action in order
to ensure compliance with the terms of this and other orders issued in this
action.

SO ORDERED

Date: 6/22, 2005

Dale J. Fischer
United States District Judge

FILED
JUN 23 2005
CLERK

NOTICE PARTY SERVICE LIST

Case No. CV03-8619-DSF (JTL) Case Title SEC - v. PATTEN, et al.
 Title of Document SECURITIES AND EXCHANGE COMMISSION v. PATTEN, et al. Findings, Order & Final Jgmt

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