



1. On April 2, 2009, pursuant to a partial settlement agreement, J. Hoegel signed a six-page Consent Agreement. Paragraph three reads in part:

Defendant further agrees that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that she did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Agreed Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure.

Agreed Mot. Enter Agreed J. Ex. A (J. Hoegel's Consent), App. at 2-3, ECF No. 14-2.

2. On April 3, 2009, the Court entered an Agreed Judgment of Permanent Injunction as to Defendant J. Hoegel. *See* Agreed J. Permanent Inj. J. Hoegel, ECF No. 22. Part IV of the Order provides:

Upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains, prejudgment interest thereon, and/or a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the amount of disgorgement and civil penalty. In connection with the Commission's motion, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he [sic] did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Agreed Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure.

*Id.* at 4.

3. Pursuant to the Consent Agreement, the Agreed Partial Judgment, and the Complaint, the Court finds that J. Hoegel violated federal securities laws. *Id.*; J. Hoegel's Consent 2–3, ECF No. 14-2; Compl. ¶¶ 1–6, ECF No. 1.

4. The Commission now seeks a final judgment order stating that J. Hoegel is liable for disgorgement of \$1,158,929.86; prejudgment interest of \$405,243.09; and a third-tier civil penalty of \$120,000.00. Pl.'s App. Supp. Mot. Entry Final J. Ex. 4 (Proposed Order), ECF No. 283-4. According to the Commission, \$95,121.01 has been collected by the Receiver in this action from Defendant to offset liability. *Id.* Thus, the Commission argues that Defendant remains liable to pay a total of \$1,589,051.94. *Id.*

5. The Court finds that J. Hoegel received \$1,158,929.86 in ill-gotten gains. *See* Pl.'s App. Supp. Mot. Entry Final J. Ex. A (Roper Decl.) ¶ 9, ECF No. 283-1. This amount represents the total transfer of money from bank accounts controlled by Millennium Bank entities to J. Hoegel, as determined by the Receiver's counsel, forensic accountants, and other representatives after analyzing the records recovered from the offices of Millennium Bank and related entities. *Id.* All of the money deposited into the accounts can be traced to investor funds. *Id.* No investor money was ever invested as promised or used for legitimate investment activities. *Id.* ¶ 6.

6. In her Response, J. Hoegel does not contest the Receiver's calculation of the amount of investor funds she received. *See generally* J. Hoegel's Resp., ECF No. 288. She also does not contest the amount or imposition of pre-judgment interest. *See id.* Instead, the parties primarily disagree about the amount already collected by the Receiver, which is to be counted against disgorgement liability.

7. The Court finds that the Receivership Estate was able to obtain approximately \$95,121.01 from accounts held in the name of J. Hoegel at various banks, including JP Morgan Chase and Umpqua Bank, and from cash she held in a safe. *See Roper Decl.* ¶ 15, ECF No. 283-1.

8. The Court also finds that the Receiver obtained assets from J. Hoegel's husband, C. Hoegel, who was a Relief Defendant found to be in possession of the proceeds of fraud or assets traceable to the fraud. *See Pl.'s App. Supp. Reply Ex. 1 (Auction Statement)*, ECF No. 289-1. The Relief Defendants were dismissed because all monetary relief sought against them had been fully satisfied. *See Order*, Apr. 15, 2015, ECF No. 274.

9. J. Hoegel argues that property that was collected and sold should further offset the amount she owes. J. Hoegel's Resp. 1-4, ECF No. 288. In particular, she urges that the following should be credited: (1) home in American Canyon, California; (2) C. Hoegel's sports memorabilia collection; (3) C. Hoegel's Mercedes SL 500; (4) 18k gold Omega Constellation 95 men's watch; (5) approximately \$1,300.00 to \$1,500.00 in cash seized from C. Hoegel's wallet on March 28, 2009; (6) personal property from the American Canyon home resold by Harvey Clars auctioneers for \$43,569.32; (7) personal property valued at approximately \$2,000.00 in the American Canyon home; and (8) personal property from the Lincoln home. *Id.*

10. In its Reply, the Commission concedes that J. Hoegel would be entitled to a maximum further offset of \$34,970.00, in addition to the \$95,121.01. Pl.'s Reply 3, ECF No. 289.

11. The Court finds that J. Hoegel is entitled to \$30,000.00 from the sale of her home in American Canyon, California, and \$4,970.00 for personal property sold at auction. *See id.* The Receiver obtained \$40,836.72 from an auction of the Hoegel's property. *See Auction Statement 14*, ECF No. 289-1.

12. The Commission argues that J. Hoegel is not entitled to credit C. Hoegel's assets, namely his sports memorabilia collection, Mercedes, watch, or cash from his wallet, because C. Hoegel's assets were surrendered to the Receiver as Fraudulent Assets; therefore, they cannot be credited against J. Hoegel's disgorgement obligation. Pl.'s Reply 2–3, ECF No. 289. The Commission further argues that J. Hoegel has insufficiently identified items she lists as seven and eight, and thus the Commission has no information regarding those items. *Id.* at 3.

13. According to J. Hoegel's Sur-Reply, California is a community property state, and she and C. Hoegel were married in 1973. J. Hoegel's Sur-Reply 1, ECF No. 290. She also argues that C. Hoegel's sports memorabilia collection was acquired over 50 years, since he was a child; thus, it cannot be said that the entire collection constituted the proceeds of moneys traceable to the fraud. J. Hoegel's Sur-Reply 1, ECF No. 290.

14. J. Hoegel requests the Court to consider her reduced ability to pay as well as a judgment against the Hoegels for \$21,753.89 in another case, *Roper v. Abbott*, No. 7:11-cv-00031 (N.D. Tex.). J. Hoegel's Resp. 4–5, ECF No. 288.

## **II. CONCLUSIONS OF LAW**

### **A. Applicable Law**

15. "Disgorgement wrests ill-gotten gains from the hands of a wrongdoer. It is an equitable remedy meant to prevent the wrongdoer from enriching himself by his wrongs. Disgorgement does not aim to compensate the victims of the wrongful acts, as restitution does." *SEC v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993) (internal citation omitted).

16. "The district court has broad discretion in fashioning the equitable remedy of a disgorgement order." *Id.* at 803.

17. “Disgorgement is ‘limited to property causally related to the wrongdoing,’ but it need only be a ‘reasonable approximation’ of those profits.” *SEC v. Halek*, 537 F. App’x 576, 580 (5th Cir. 2013) (quoting *Allstate Ins. Co. v. Receivable Fin. Co., LLC*, 501 F.3d 398, 413 (5th Cir. 2007)).

18. “The SEC carries the initial burden to prove that the amount of disgorgement is a reasonable approximation of profits connected to the violation. . . . [T]he burden then shifts to the defendant to prove that the amount is unreasonable.” *Id.* at 581.

19. In determining the amount of ill-gotten profits, “doubts are to be resolved against the defrauding party.” *SEC v. MacDonald*, 699 F.2d 47, 55 (1st Cir. 1983); accord *SEC v. Life Partners Holdings, Inc.*, No. 1-12-CV-33-JRN, 2014 WL 7051375, at \*4 (W.D. Tex. Dec. 2, 2014).

20. “A defendant is not immune from disgorgement merely because he has spent or lost the proceeds of his fraudulent scheme.” *SEC v. Seghers*, 298 F. App’x 319, 336 (5th Cir. 2008). Thus, the inability to pay is irrelevant to the disgorgement amount. *SEC v. United Energy Partners, Inc.*, 88 F. App’x 744, 746 (5th Cir. 2004).

21. “A relief defendant, sometimes referred to as a ‘nominal defendant,’ has no ownership interest in the property that is the subject of litigation but may be joined in the lawsuit to aid the recovery of relief.” *In re Wyly*, 526 B.R. 194, 199–200 (Bankr. N.D. Tex. 2015) (quoting *Janvey v. Adams*, 588 F.3d 831, 834 (5th Cir. 2009)).

22. Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d) allow the Court to impose civil penalties to punish the violator and to deter future violations of securities laws. *SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007). The statutes authorize a maximum third tier penalty of \$130,000.00 per violation for a natural person’s fraud or deceit causing substantial losses or risk of losses to others. *SEC v.*

*AIC, Inc.*, No. 3:11-CV-176-TAV-HBG, 2014 WL 3810667, at \*6 (E.D. Tenn. Aug. 1, 2014); 17 C.F.R. § Pt. 201, Subpt. E, Tbl. III (noting inflation adjustment from \$120,000.00 to \$130,000.00); 17 C.F.R. § 201.1003 (noting that the inflation adjustment in Table III applies to violations occurring after February 14, 2005).

23. “Although the statutory tier determines the maximum penalty, the ‘actual amount of the penalty [is] left up to the discretion of the district court.’” *AIC*, 2014 WL 3810667, at \*6 (quoting *SEC v. Kern*, 425 F.3d 143, 153 (2d Cir. 2005)). Factors relevant to determining the propriety and amount of civil penalties include: “(1) the egregiousness of the defendant’s conduct; (2) the degree of the defendant’s scienter; (3) whether the defendant’s conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant’s conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant’s demonstrated current and future financial condition.” *Opulentica*, 479 F. Supp. 2d at 331.

#### **B. Consent Agreement**

24. The Court concludes that J. Hoegel’s consent to the Partial Judgment entered by this Court precludes her from arguing that she did not violate the federal securities laws in the manner set out in the Complaint and also precludes her from challenging the validity of the Consent or Agreed Judgment. Agreed J. Permanent Inj. J. Hoegel 4, ECF No. 22; J. Hoegel’s Consent 2–3, ECF No. 14-2; Compl. ¶¶ 1–6, ECF No. 1. J. Hoegel’s argument that she did not consent for the Court to adopt the allegations in the Complaint as true for the purposes of the instant motion is without merit. *See id.* Therefore, pursuant to the Agreed Judgment for a Permanent Injunction, the allegations of the Complaint are accepted and deemed true by the Court. *See id.*

#### **C. Disgorgement Liability**

25. An order for disgorgement against J. Hoegel is proper because she violated the federal securities laws. *Id.*; *see also Huffman*, 996 F.2d at 802.

26. The appropriate amount of disgorgement to be assessed against Defendant is the total amount of illicit profits or ill-gotten gains she received from her fraudulent conduct. *See Opulentica*, 479 F. Supp. 2d at 329 (“Disgorgement of illicit profits is a proper equitable remedy for securities fraud.”).

27. The receiver reported that J. Hoegel received \$1,158,929.86 in ill-gotten gains. *See Roper Decl.* ¶ 9, ECF No. 283-1. J. Hoegel does not contest the amount received. Therefore, the Court concludes that the Commission has met its burden of showing that \$1,158,929.86 is a reasonable approximation of ill-gotten gains. *See Halek*, 537 F. App’x at 580.

#### **D. Pre-Judgment Interest**

28. An order for pre-judgment interest against J. Hoegel is proper because she violated the federal securities laws and has not contested the imposition or amount of pre-judgment interest. *See SEC v. McGinn, Smith & Co., Inc.*, No. 1:10-cv-457 (GLS/CFH), 2015 WL 1446018, at \*10 (N.D.N.Y. Mar. 30, 2015) (“Here, prejudgment interest is appropriate, particularly in light of the fact that neither McGinn nor Smith have objected to the imposition of prejudgment interest.”).

29. The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions such as this one. That rate of interest 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 the fraud.

30. Therefore, the Court concludes that \$405,243.09 is a reasonable approximation of prejudgment interest. *See Roper Decl.* ¶ 13, ECF No. 283-1.

**E. Civil Penalty**

31. In light of the substantial losses to investors and the egregiousness of the scheme, the Court concludes that the imposition of a civil penalty is appropriate. 15 U.S.C. § 77t(d)(1)(c); 15 U.S.C. § 77u(d)(3)(B)(iii).

32. The maximum third tier civil penalty *per violation* occurring after 2005 (which could be calculated per defrauded investor) would be \$130,000.00, and \$120,000.00 for violations occurring before February 2004. *See AIC*, 2014 WL 3810667, at \*7. The Commission requests a *total* penalty in the amount of \$120,000.00. The Court concludes that a total civil penalty of \$120,000.00 is an appropriate deterrent in light of Defendant's financial condition.

**F. Credits Against Obligations**

33. The Court concludes that J. Hoegel is permitted to credit the \$95,121.01 that has been received from bank accounts and her safe against her disgorgement obligations. *See Roper Decl.* ¶ 15, ECF No. 283-1.

34. The Court concludes that J. Hoegel is permitted to credit the \$30,000.00 from the sale of her home in American Canyon, California, against her disgorgement obligations.

35. The Court concludes that J. Hoegel is permitted to credit \$4,970.00 for personal property sold at auction against her disgorgement obligations.

36. The Court concludes that J. Hoegel is not permitted to credit C. Hoegel's Fraudulent Assets, previously acquired in satisfaction of his obligations as a Relief Defendant.

37. The Receiver argues that C. Hoegel's sports memorabilia collection, Mercedes, watch, and cash from his wallet were surrendered to the Receiver as Fraudulent Assets; therefore, they cannot be credited against J. Hoegel's disgorgement obligation. It is unclear from the record before

the Court which assets were community property and which were separate property. Because the burden rests upon the defrauding party in this disgorgement action, J. Hoegel has not met her burden of establishing a community property interest in these assets or that such an interest could be used to offset her disgorgement liability. *See Halek*, 537 F. App'x at 582 (holding that the defendant bears the burden of showing that settlement payments had been made that would have offset disgorgement liability).

38. Similarly, J. Hoegel has not met her burden of establishing that she is entitled to credit unspecified personal property she lists as items seven and eight in her response. *See id.*

39. The judgment against the Hoegels was not related to the recovery of J. Hoegel's ill-gotten gains and is therefore irrelevant to her disgorgement obligations.

40. J. Hoegel's ability to pay is not related to the amount of ill-gotten gains and is therefore irrelevant to her disgorgement obligations. *See Seghers*, 298 F. App'x at 336.

41. In summary, the Court concludes that the following have been collected in satisfaction of J. Hoegel's disgorgement obligation: \$95,121.01 in her bank accounts and safe; \$30,000.00 from the sale of her home; and \$4,970.00 for personal property sold at auction. Therefore, J. Hoegel remains liable to pay \$1,554,081.94.

**IT IS THEREFORE ORDERED:**

**I.**

Defendant, her agents, servants, employees, attorneys, and all other persons in active concert or participation with them, who receive actual notice of this order, by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from violating Section 17(a) of the

Securities Act [15 U.S.C. §77q(a)], directly or indirectly, in the offer or sale of a security, by making use of any means or instruments of transportation or communication in interstate commerce or by use of the mails:

- A. to employ any device, scheme or artifice to defraud;
- B. to obtain 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 the light of the circumstances under which they were made, not misleading; and/or
- C. to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any purchaser.

## II.

Defendant, her agents, servants, employees, attorneys, and all other persons in active concert or participation with them, who receive actual notice of this order, by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)] 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; or

(B) 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 Commission 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].

### III.

Defendant, her agents, servants, employees, attorneys, and all other persons in active concert or participation with them, who receive actual notice of this order, by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. §78j(b) and 17 C.F. R. §240.10b-5], directly or indirectly, in connection with the purchase or sale of a security, by making use of any means or instrumentality of interstate commerce, of the mails or of any facility of any national securities exchange:

A. to use or employ any manipulative or deceptive device or contrivance;

B. to employ any device, scheme or artifice to defraud;

C. to make any untrue statement of a material fact or omit 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; and/or

D. to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

### IV.

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is liable for disgorgement of **\$1,158,929.86**, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of **\$405,243.09**, and a civil penalty in the amount of **\$120,000.00** pursuant to Section 20(d) of the Securities Act [15

U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], for a total of **\$1,684,172.95**. A portion of this total, **\$130,091.01**, has been collected by the Receiver in this action from Defendant in satisfaction of Defendant's monetary obligations pursuant to this Judgment. Therefore, Defendant remains liable to pay **\$1,554,081.94**.

Payments under this Section shall be made within 14 days following the entry of this Final Judgment to the Receiver appointed in this case, Richard Roper, c/o Thompson and Knight, LLP, 1722 Routh Street, Suite 1500, Dallas, TX 75201, and shall become part of the Receivership Assets, defined in this Court's Order Appointing Receiver dated March 25, 2009 (ECF No. 10) ("Receivership Order"), to be distributed to the rightful claimants upon further order of this Court.

After the receivership is closed, Defendant may transmit payment electronically to the Commission, 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>. Defendant 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; Defendant's name as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of proof of each payment made under this Section in a letter or email to the Commission's counsel in this action.

By making a 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. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund 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 any Defendant's payment of disgorgement in this action, argue that she is entitled to, nor shall she 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 a Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

V.

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.

**VI.**

The Asset Freeze provisions of the Court's March 25, 2009 Temporary Restraining Order, Freezing Assets, Requiring an Accounting, Requiring Preservation of Documents, Authorizing Expedited Discovery, and Granting Other Equitable Relief against Defendants ("TRO"), and the Court's March 25, 2009 Order Appointing Receiver against Defendants shall stay in full force and effect pending further order of this Court.

**VII.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court shall retain jurisdiction over this matter for the purposes of enforcing the terms of this Final Judgment.

**VIII.**

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Agreed Judgment forthwith and without further notice.

**SO ORDERED** this **8th day of July, 2015**.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE