

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

BLAKE B. RICHARDS,

Defendant.

CIVIL ACTION FILE

NO. 1:13-cv-01729-WBH

J U D G M E N T

This action having come before the court, Honorable Willis B. Hunt, Jr., United States District Judge, for consideration of Plaintiff's Motion for Summary Judgment, and the court having granted said motion, it is

ORDERED AND ADJUDGED that Judgment is hereby entered against Defendant and in favor of Plaintiff pursuant to the terms of the attached 8/26/2014, Order, and pursuant to the terms of the attached Order of Permanent Injunction entered in this Court against Defendant on August 20, 2013.

This case is **DISMISSED**.

Dated at Atlanta, Georgia, this 26th day of August, 2014.

JAMES N. HATTEN
CLERK OF COURT

By: s/ M. York
Deputy Clerk

Filed: August 26, 2014
Entered: August 27, 2014
In the Clerk's Office
James N. Hatten
Clerk of Court

By: s/ M. York
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	1:13-CV-1729-WBH
v.	:	
	:	
BLAKE E. RICHARDS,	:	
Defendant.	:	

ORDER

The Securities and Exchange Commission filed the instant action claiming that Defendant Blake Richards had engaged in securities fraud. On August 20, 2013, with Defendant’s consent, this Court permanently enjoined Defendant from engaging in further violations of the securities laws. [Doc. 16]. As part of that order, this Court invited the Government to file a motion for summary judgment on the issue of disgorgement and civil penalties. The Government has now filed its motion, [Doc. 18], and, in response, [Doc. 19], Defendant, having consented to the imposition of disgorgement and a penalty, [Doc. 15], does not dispute the Government’s statement of material facts or challenge the Government’s entitlement to an order of disgorgement and civil penalty. Defendant does, however, note that he is indigent and requests leniency with respect to the amount of civil penalty to be imposed.

Accordingly, this Court hereby adopts the Government's statement of material facts. Under those facts, Defendant did with scienter defraud certain investors of a substantial portion of their funds. Defendant benefitted from his fraud in the amount of \$1,780,531.89. The Government's prejudgment interest calculation totals \$49,391.32. As such, this Court concludes that total disgorgement and interest imposed against Defendant should be \$1,829,923.21.

Turning to the question of fixing an appropriate civil penalty, this Court first concludes that Plaintiff's actions clearly qualify for a third tier penalty as it involved fraud and deceit and the violation resulted in substantial losses to Defendant's victims. This Court may thus impose a fine of up to \$120,000.00. In considering the appropriate fine to impose, this Court considers:

- (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.

S.E.C. v. Capital Solutions Monthly Income Fund, LP, --- F. Supp. 2d ---, 2014 WL 2922644 at *11 (D. Minn. 2014).

Defendant's violations clearly involved fraud and deceit in violation of the securities laws, his actions resulted in substantial losses to unsophisticated investors

(some of whom were quite elderly), Defendant was the central and essential person to the fraudulent investment schemes, and Defendant's fraud occurred over an extended period (from 2008 to 2013). On the other hand, Defendant has admitted liability in this matter, and all indications are that he was generally cooperative with the Government's efforts to resolve this matter. Moreover, while the Government insists that a civil penalty is necessary, it has not proposed the amount that the civil penalty should be, and the Government has not disputed Defendant's claim of indigence.¹

Keeping score, this Court concludes that Defendant has four points against him and two points in his favor. While the points against him are more significant, this Court believes that it should consider Defendant's ability to pay. As such, this Court begins with the maximum penalty \$120,000.00 and reduces it by one third for a civil penalty of \$80,000.00.

Imposition of Disgorgement and a Civil Penalty

As discussed above, Plaintiff's motion for summary judgment, [Doc. 18], is hereby **GRANTED**. Accordingly, Defendant is **ORDERED** to pay disgorgement in

¹ In other securities cases, the Government has argued that the defendant's ability to pay should not be a consideration in setting a civil penalty. This Court has concluded, however, that it does have the discretion to consider a defendant's ability to pay. See SEC v. Amerman, Case No. 1:07-CV-2280-WBH, N.D. Ga. (Order of Feb. 5, 2014, Doc. 128).

the amount of \$1,780,531.89, and pre-judgment interest of \$49,391.32. Defendant shall satisfy this obligation by paying \$1,829,923.21 within 30 days of the date of this Order by cashier's check, certified check, or postal money order made payable to the Clerk, Northern District of Georgia; hand-delivered or delivered by overnight delivery service to the Clerk, United States District Court, Northern District of Georgia, 75 Spring Street, S.W., Atlanta, GA 30303; and submitted under a cover letter which identifies Blake B. Richards as a defendant in these proceedings, a copy of which cover letter and money order or check shall be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, 950 E. Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326, within 35 days from the entry of this Final Judgment. By making his payment, Defendant Richards relinquishes all legal and equitable right, title and interest in such funds, and no part of the funds shall be returned to defendant Richards. The Clerk shall deposit the funds into an interest bearing account with the Court Online Banking System (COLB) or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the COLB until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income

earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

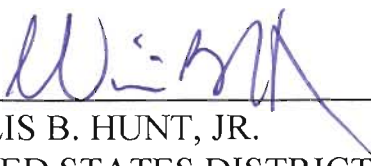
Further, pursuant to 15 U.S.C. § 77t(d), 15 U.S.C. § 78u(d)(3), and 15 U.S.C. § 80b-9, Defendant is **ORDERED** to pay a civil penalty in the amount of \$80,000.00 within thirty (30) days from the date of this Order by cashier's check, certified check, or postal money order made payable to the Clerk, Northern District of Georgia; hand-delivered or delivered by overnight delivery service to the Clerk, United States District Court, Northern District of Georgia, 75 Spring Street, S.W., Atlanta, GA 30303; and submitted under a cover letter which identifies Blake B. Richards as the defendant in these proceedings, a copy of which cover letter and money order or check shall be sent to Edward G. Sullivan, Senior Trial Counsel, Securities and Exchange Commission, 950 E. Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326, within 35 days from the date of this Order. By making his 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. The Clerk shall deposit the funds into an interest bearing account with the COLB or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the COLB until further

order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Court anticipates that it may, post final judgment, oversee and direct a distribution of the civil penalties collected in this matter to investor victims of Defendant's fraud in accordance with the Fair Funds for Investors provision of 15 U.S.C. § 7246(a).

This Court shall retain jurisdiction over this matter for all purposes, including implementing and enforcing the terms of this Order, and may order other and further relief that this Court deems appropriate under the circumstances.

The Clerk is directed to **ENTER JUDGMENT** against Defendant and in favor of Plaintiff pursuant to the terms of this Order, and pursuant to the terms of the Order of Permanent Injunction entered in this Court against Defendant on August 20, 2013, and to **CLOSE** this action.

IT IS SO ORDERED, this 26th day of August, 2014.



WILLIS B. HUNT, JR.
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

BLAKE B. RICHARDS,

Defendant.

Civil Action File No.

1:13-CV-1729-JEC

ORDER OF PERMANENT INJUNCTION
AS TO DEFENDANT BLAKE B. RICHARDS AND OTHER RELIEF

The Securities and Exchange Commission having filed a Complaint and Defendant Blake B. Richards (“Richards”) having entered a general appearance; consented to the Court’s jurisdiction over him and the subject matter of this action; consented to entry of this Order of Permanent Injunction without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Order of Permanent Injunction:

I.

IT IS HEREBY ORDERED that Defendant Richards and his agents, servants, employees, attorneys and those persons in active concert or participation

with them who receive actual notice of this Order of Permanent Injunction by personal service or otherwise, be, and they hereby are, permanently restrained from, directly or indirectly, in connection with the purchase or sale or in the offer or sale of securities, by use of any means or instrumentalities of interstate commerce or any means or instruments of transportation or communication in interstate commerce, or by the mails or any facility of any national securities exchange, be, and they hereby are, restrained from, directly or indirectly:

- (1) employing any device, scheme or artifice to defraud;
- (2) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;
- (3) obtaining money or property by means of any untrue statement of a material fact, or omitting 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; or
- (4) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder, by directly or indirectly, (1) creating a false appearance or otherwise deceiving any

person or (ii) disseminating false or misleading documents, materials, or information or making either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) the use of investor funds;
- (B) the risk of the investment; and
- (C) the existence and/or nature of any profit-generating enterprise.

II.

IT IS FURTHER ORDERED that defendant Richards and his agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this Order of Permanent Injunction by personal service or otherwise hereby are permanently enjoined and restrained from, directly or indirectly:

- (1) employing devices, schemes, or artifices to defraud clients or prospective clients; or
- (2) engaging in transactions, practices, or courses of business which operated as a fraud or deceit upon clients or prospective clients;

in violation of Sections 206(1) and (2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(1) and (2)], by making false statements to investors or others about investments or investment proceeds, by taking clients' investment proceeds into

Defendant Richards' custody, or otherwise converting the investment proceeds of clients to Richards' personal benefit.

III.

IT IS FURTHER ORDERED that, pending a later Motion To Set Disgorgement and Civil Penalties, the assets of Defendant Richards shall continue to remain frozen, pursuant to the terms of earlier orders of this Court. Defendant Richards may have access to \$1,200 per month, which shall be exempt from the freeze for the purpose of meeting ordinary and necessary living expenses. In addition, Defendant Richards may have access to not more than a one-time total of \$7,500, which shall be exempt from the freeze for the purpose of paying attorney's fees to Nathaniel Cochran, Esq.

IV.

IT IS FURTHER ORDERED that Defendant and his officers, agents, employees, servants, attorneys, any bank or financial institution holding any assets of the Defendant and all persons in active concert or participation with them, and each of them, are restrained and enjoined from destroying, transferring or otherwise rendering illegible all books, records, papers, ledgers, accounts, statements and other documents employed in any of such Defendant's businesses, which reflect the business activities of Defendant Richards, or which reflect the transactions described in the Commission's Complaint.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Richards shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and 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 Sections 209(d) and 209(e) of the Advisers Act [15 U.S.C. §§ 80b-9]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission at a later date. Prejudgment interest shall be calculated from May 1, 2013, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant Richards will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant Richards may not challenge the validity of the Consent or this Order of Permanent Injunction; but may challenge the appropriateness of the amount of disgorgement to be ordered and/or the amount of the civil penalty to be ordered; (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 testimony or

sworn 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. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant Richards is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Richards shall comply with all of the undertakings and agreements set forth therein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Order of Permanent Injunction.

Dated: August 20, 2013

/s/ Julie E. Carnes

Julie E. Carnes, Judge
United States District Court