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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION, ***Plaintiff,*** **v.** **MICHAEL M. COHEN, et al.** ***Defendants.***	**Civil Action No. 15-1292** **ORDER**

THIS MATTER comes before the Court on Plaintiff the United States Securities Exchange Commission's (the "SEC") Motion for Monetary Relief and Final Judgment, ECF No. 62;

and it appearing that this civil enforcement action arises from Defendant Michael M. Cohen's ("Cohen") knowing certification of false financial statements for Proteonomix, Inc. ("Proteonomix," and together with Cohen, "Defendants");

and it appearing that on February 19, 2015, Cohen pleaded guilty to a one-count Information charging him with falsely certifying a number of Proteonomix's SEC forms by failing to disclose that his father-in-law was the President of various entities with which Proteonomix transacted (the "FIL entities"), see United States v. Cohen, No. 15-91 (D.N.J. Feb. 19, 2019) (the "Criminal Action");

and it appearing that notwithstanding Cohen's guilty plea to a reporting violation, the SEC filed a civil Complaint against Cohen in this matter, alleging the following securities-related claims against Defendants: (1) violations of Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a); (2) violations of Section 10(b) of the Securities Exchange Act of 1934

(the "Exchange Act"), 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 240.10b-5; (3) violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c); (4) violations of Section 13(a), 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13; (5) violations of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A); (6) violations of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B); (7) violations of Section 13(b)(6) of the Exchange Act, 15 U.S.C. 78m(b)(5) and Rule 13b2-1, 17 C.F.R. 240.13b2-1, against Cohen; and (8) violations of Rule 13a-14, 17 C.F.R. § 240.13a-14, against Cohen;

and it appearing that on the same day it filed its Complaint, the SEC also filed a motion requesting the Court enter a consent judgment executed between the parties before Cohen's guilty plea in the Criminal Action (the "Consent Judgment"), see ECF No. 3, and the Court entered the Consent Judgment on March 6, 2015, ECF Nos. 4-5;

and it appearing that on February 2, 2016, Cohen filed a Motion to Vacate the Consent Judgment, which the Court administratively terminated pending Cohen's sentencing hearing in the Criminal Action, ECF No. 10;

and it appearing that on March 28, 2017, the Court sentenced Cohen in the Criminal Action to a one-year term of probation, ECF No. 42.4;

and it appearing that since Cohen's guilty plea in the Criminal Action, the SEC has filed three separate Motions for Monetary Relief and Final Judgment, see ECF Nos. 6, 42, 62, two of which the Court denied without prejudice based on the record's lack of support for the SEC's proposed relief, ECF No. 35, and Defendants' request for discovery from the SEC, ECF No. 52, and the last of which the Court administratively terminated pending the parties' briefing on

whether the Court should modify or vacate the Consent Judgment, see ECF No. 67 (the "January 2020 Order");

and it appearing that on August 10, 2020, the SEC filed a Notice Regarding Monetary Remedies, wherein it indicated that in light of the United States Supreme Court's decision in Liu v. SEC, 140 S. Ct. 1926 (2020) and "the unique circumstances of this case," the SEC "no longer seeks disgorgement or prejudgment interest against either Defendant," ECF No. 91 ¶¶ 2-3, 5;

and it appearing that the SEC further stated that it seeks "one third tier penalty of $150,000 against Cohen, and one third tier penalty of $725,000 against Proteonomix" for the reasons stated in its June 7, 2019 Motion for Monetary Relief and Final Judgment and its briefing related to the January 2020 Order, id. ¶¶ 3-4 (citing ECF No. 62.1 and ECF No. 68);[1]

and it appearing that the Court has discretion in deciding the amount of monetary penalty to impose under 15 U.S.C. § 78u(d)(3) and considers the following factors in exercising such discretion: "(1) the egregiousness of the conduct; (2) the degree of scienter; (3) whether the conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the conduct was recurrent; and (5) whether the penalty should be reduced due to demonstrated current and future financial condition," SEC v. Cooper, 142 F. Supp. 3d 302, 320 (D.N.J. 2015);

and it appearing that "[t]hird tier penalties set the ceiling for penalty amounts and are available when the securities law violation 'involved fraud, deceit, manipulation, or deliberate and reckless disregard of a regulatory requirement [and] such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial loss to other persons," id.;

[1] The SEC originally sought the following relief against Defendants: (1) joint and several disgorgement of $554,021; (2) prejudgment interest on the amount of disgorgement; (3) a third tier penalty of $554,021 against Cohen; and (4) a third tier penalty of $ 9,425,000 against Proteonomix. See ECF No. 91 ¶ 1.

and it appearing that in support of its claim that Cohen committed securities fraud violations, the SEC relies in large part on Cohen's statement during his Criminal Action plea that the FIL entities "purportedly" performed work in exchange for Proteonomix shares and Cohen's invocation of his Fifth Amendment privilege to demonstrate Cohen engaged in deceptive conduct, and checks written to Cohen and one of the FIL entities to represent Cohen's "ill-gotten gains," see ECF No. 62.1 at 5, 7, 10, 12-13, 24; ECF No. 68 at 6, 26-30;

and it appearing that in the January 2020 Order, the Court stated that "there is an insufficient factual basis to support a finding of a securities fraud violation" or to "support the allegation that Defendants fraudulently directed Proteonomix shares to the FIL companies," January 2020 Order at 3 (emphasis in original);

and it appearing that the Court also rejected the SEC's argument that its evidence pertaining to the securities fraud claims demonstrates Proteonomix stock was fraudulently transferred without value to the FIL entities and that Cohen fraudulently profited as a result, January Order at 4;

and it appearing that the SEC, in this application, does not fully describe or proffer sufficient support for its imposition of third-tier penalties;

and it appearing that having carefully reviewed the record and considered the Cooper factors, the Court finds that maximum first-tier penalties under 15 U.S.C. § 78u(d)(3)(B)(i) are warranted based on the "unique" circumstances of this case, which include: (1) Cohen's guilty plea in the relevant Criminal Action to one technical reporting violation for failing to disclose the relationship between his father-in-law and the FIL entities; (2) the SEC's abandonment of its disgorgement claim; (3) the lack of evidence that there were substantial losses to other persons in connection with Cohen's conduct; and (4) the present financial hardship of both Cohen and

Proteonomix, see ECF No. 64 at 9 (explaining that "Cohen has gone through bankruptcy" and Proteonomix "has no capital" and "no assets");[2]

IT IS on this 27th day of August, 2020;

ORDERED that the SEC's Motion for Monetary Relief and Final Judgment, ECF No. 62, is **GRANTED in part and DENIED in part**; and it is further

ORDERED that judgment is hereby entered against Cohen in the amount of $7,500; and it is further

ORDERED that judgment is hereby entered against Proteonomix in the amount of $75,000; and it is further

ORDERED that Cohen's Motion to Vacate the Consent Judgment, ECF No. 10, is **DENIED**; and it is further

ORDERED that this matter is **CLOSED**.

/s Madeline Cox Arleo
HON. MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

[2] It bears noting that the Consent Order acknowledges that the amount of civil monetary penalties is left to the Court's discretion. ECF No. 3 at X. This is particularly compelling here where the SEC has abandoned its request for disgorgement, which it originally sought before the Supreme Court's Liu decision. For these reasons, and based on the "unique circumstances" of this case, ECF No. 91 ¶ 3, the Court need not vacate the Consent Order to impose the monetary penalties ordered herein.