

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|-------------------------------------|---|--------------------|
| -----X | | |
| SECURITIES AND EXCHANGE COMMISSION | : | |
| | : | |
| Plaintiff, | : | 15 Civ. 7547 (VSB) |
| | : | |
| v. | : | ECF Case |
| | : | |
| JASON W. GALANIS, JOHN P. GALANIS, | : | |
| JARED M. GALANIS, DEREK M. GALANIS, | : | |
| GARY T. HIRST, and GAVIN L. HAMELS, | : | |
| | : | |
| Defendants. | : | |
| -----X | | |

~~PROPOSED~~ FINAL JUDGMENT AS TO DEFENDANT DEREK M. GALANIS

The Securities and Exchange Commission having filed a Complaint and Derek M. Galanis (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 5 of the Securities Act of 1933 [15 U.S.C. § 77e] (“Securities Act”) by, 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;

- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) 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].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of

transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (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 of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to 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; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$23,000, representing his ill-gotten gains as a result of the conduct alleged in the Complaint, together with prejudgment interest of \$6,695.32, for a total of \$29,695.32. However, Defendant's obligation to pay disgorgement and prejudgment interest shall be deemed satisfied upon entry of this Final Judgment by the restitution and/or forfeiture orders entered against him in *United States v. Jason Galanis, et al.*, 15 Cr. 643 (PKC) (S.D.N.Y.).

V.

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

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).


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 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 Final Judgment forthwith and without further notice.

Dated: August 9, 2018


Vernon S. Broderick
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

JASON W. GALANIS, JOHN P. GALANIS,
JARED M. GALANIS, DEREK M. GALANIS,
GARY T. HIRST, and GAVIN L. HAMELS,

Defendants.

15 Civ. 7547 (VSB)

ECF Case

CONSENT OF DEFENDANT DEREK M. GALANIS

1. Defendant Derek M. Galanis (“Defendant”) acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Jason Galanis, et al.*, 15 Cr. 643 (PKC) (S.D.N.Y.) (“*United States v. Galanis*”), Defendant pleaded guilty to conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and securities fraud, in violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78j(b) and 78ff, and Rule 10b-5 thereunder, 17 C. F. R. § 240.10b-5. In connection with that plea, Defendant admitted the facts set out in the transcript excerpt of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Galanis*.

3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violations of Section 5 of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77e; Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C. F. R. § 240.10b-5; and

(b) orders that while Defendant is liable to pay disgorgement of \$23,000, representing his ill-gotten gains, together with prejudgment interest of \$6,695.32, for a total of \$29,695.32, such obligation to pay disgorgement and prejudgment interest shall be deemed satisfied by the restitution and/or forfeiture orders entered in the criminal action against him, *United States v. Galanis*.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy “not to permit a defendant or

respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings” and “a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.” As part of Defendant’s agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant’s: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 6.18.18

[Signature]
Derek M. Galanis

On 6.18, 2018, Derek Galanis, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

[Signature]
Notary Public
Commission expires:

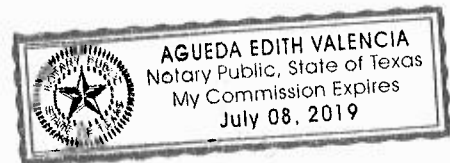


EXHIBIT A

G8FYGALP

PLEA

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

15 CR 643

5 DEREK GALANIS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 August 15, 2016
12:15 p.m.

10 Before:

11 HON. KEVIN N. FOX,
12 Magistrate Judge

13 APPEARANCES

14 PREET BHARARA
15 United States Attorney for the
16 Southern District of New York
17 REBECCA MERMELSTEIN
18 BRIAN BLAIS
Assistant United States Attorney

19 ANTHONY J. BRASS
Attorney for Defendant

20 ALSO PRESENT: SHANNON BIENIEK, FBI

21
22
23
24
25

1 signed the last page of the document?

2 MS. MERMELSTEIN: Yes, your Honor.

3 THE COURT: Mr. Galanis, other than the understandings
4 and agreements that you and your attorney and representatives
5 of the government have made and reached that are outlined in
6 the August 5, 2016, writing about which we have been speaking,
7 have any other agreements or understandings been made or
8 reached with you in connection with your tender of a plea of
9 guilty to Counts One and Two of the indictment?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Sir, is your plea being made voluntarily,
12 that is, of your own free will?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you commit the offenses set forth at
15 Counts One and Two of indictment S1 15 CR 643?

16 THE DEFENDANT: I did, your Honor.

17 THE COURT: Would you tell me in your own words what
18 it is that you did that makes you believe yourself guilty of
19 the offenses set forth at Counts One and Two of the indictment.

20 THE DEFENDANT: I recruited a foreign nominee to hold
21 Gerova shares without purpose, and I did so knowing that it was
22 a New York Stock Exchange-listed company in New York.

23 THE COURT: When you engaged in the conduct that you
24 just described, did you do that pursuant to an agreement that
25 you had with another person or persons?

1 THE DEFENDANT: Yes, your Honor. I was conspiring
2 with several people.

3 THE COURT: When or approximately when was it that you
4 engaged in the conduct that you just described?

5 THE DEFENDANT: I think it was around the summer of
6 2010, your Honor.

7 THE COURT: In connection with the offense set forth
8 at Count Two of the indictment, it is alleged, among other
9 things, that certain statements of material facts were either
10 omitted or untrue.

11 What, if anything, can you tell me in connection with
12 those allegations?

13 THE DEFENDANT: I'm sorry, your Honor. I don't
14 understand the question.

15 THE COURT: With respect to Count Two of the
16 indictment which charges securities fraud, it is alleged, among
17 other things, that material facts were omitted from statements
18 that were made or that untrue statements were made in
19 connection with the activities described in Count Two.

20 What, if anything, can you tell me about that?

21 THE DEFENDANT: Yes, your Honor. I recruited a
22 foreign nominee with having no value or purpose to acquire that
23 stock.

24 THE COURT: In doing so, were there statements that
25 were untrue that were made? Or were there statements that were

1 omitted to being made or should have been made in light of the
2 circumstances that are described at Count Two of the
3 indictment?

4 MS. MERMELSTEIN: Your Honor, if I could perhaps
5 clarify.

6 THE COURT: Just one moment.

7 THE DEFENDANT: Yes, there were, your Honor, I
8 believe.

9 THE COURT: Is there some doubt in your mind?

10 THE DEFENDANT: No. There's no doubt, your Honor.

11 THE COURT: What is it that you wanted to clarify?

12 MS. MERMELSTEIN: I apologize, your Honor. Just that
13 the securities fraud elements permit false statements to be one
14 of the ways the government can prove --

15 THE COURT: I indicated that among other things that
16 those were among the allegations.

17 MS. MERMELSTEIN: I just wanted to clarify that this
18 defendant is not the defendant who made the false statements
19 concerning the purchases of the issuance of the Gerova shares.
20 Other codefendants may have made the statements which may have
21 been his confusion.

22 THE COURT: When you engaged in the conduct about
23 which you have been speaking, Mr. Galanis, did you know that
24 what you were doing was wrong?

25 THE DEFENDANT: I did, your Honor.

1 THE COURT: In connection with the activities that
2 you've been discussing, can you tell me whether either the
3 mails were used or some other instrumentality involving
4 commerce, interstate commerce, was involved.

5 THE DEFENDANT: I used the Internet, your Honor.

6 THE COURT: Are there any questions the government
7 would have me put to Mr. Galanis?

8 MS. MERMELSTEIN: No, your Honor. I would just
9 proffer, with regard to venue, that Gerova, which was a
10 publicly traded company, traded on the New York Stock Exchange
11 over servers located in the Southern District of New York
12 during parts of the charged period.

13 THE COURT: Thank you.

14 Mr. Brass, are you aware of any reason why your client
15 should not plead guilty to Counts One and Two of the
16 indictment?

17 MR. BRASS: I am not, your Honor.

18 THE COURT: Is the government aware of any reason why
19 the defendant should not plead guilty to Counts One and Two of
20 the indictment?

21 MS. MERMELSTEIN: No, your Honor.

22 THE COURT: If the matter were to proceed to trial,
23 would evidence would the government offer in support of trial
24 to make Counts One and Two?

25 MS. MERMELSTEIN: The government would prove,