

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-- against --

12-CV-2937

**BRYAN ARIAS, HUGO A. ARIAS, ANTHONY C.
CICCONE, SALVATORE CICCONE, DIANE KAYLOR,
JASON A. KERYC, ANTHONY MASSARO,
CHRISTOPHER E. CURRAN, RYAN K. DUNASKE,
MICHAEL P. DUNNE, MARTIN C. HARTMANN III,
MICHAEL D. KERYC, RONALD R. ROALDSEN, JR.,
AND LAURA ANN TORDY,**

Defendants.

**[PROPOSED] FINAL JUDGMENT AS TO DEFENDANTS
SALVATORE CICCONE, CHRISTOPHER E. CURRAN, RYAN K. DUNASKE,
MICHAEL D. DUNNE, MICHAEL D. KERYC, AND RONALD R. ROALDSEN, JR.**

WHEREAS, the Securities and Exchange Commission having filed a Complaint and Defendants Salvatore Ciccone (“Salvatore Ciccone”), Christopher E. Curran (“Curran”), Ryan K. Dunaske (“Dunaske”), Michael D. Dunne (“Dunne”), Michael D. Keryc (“Michael Keryc”), and Ronald R. Roaldsen, Jr. (“Roaldsen”) (collectively, “Defendants”) having each entered a general appearance; consented to the Court’s jurisdiction over Defendants and the subject matter of this action; consented to entry of Judgments that, *inter alia*, ordered an injunction (*see* Judgment as to Michael Keryc dated June 13, 2019, ECF No. 75; Judgment as to Christopher Curran dated Aug. 16, 2019, ECF No. 87; Judgment as to Michael Dunne dated Oct. 25, 2019, ECF No. 89; Judgment as to Ronald Roaldsen dated Nov. 25, 2019, ECF No. 93; Judgment as to Ryan Dunaske dated Dec. 16, 2019, ECF No. 95; Judgment as to Salvatore Ciccone dated Oct. 30, 2020, ECF No. 113); waived findings of fact and conclusions of law; and waived any right to appeal from the Judgment;

WHEREAS, the Judgments provided that: (a) upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)(3)] and, if so, the amount(s) of the disgorgement and/or civil penalty; and (b) if disgorgement is ordered, Defendants shall pay prejudgment interest thereon, calculated from February 1, 2009, 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);

WHEREAS, on June 16, 2021, the Commission filed the fully briefed motion package for the motion seeking disgorgement, prejudgment interest, and civil monetary penalties as to Defendants (“Motion”) (ECF Nos. 131-141);

WHEREAS, on November 11, 2021, Magistrate Judge Steven I. Locke issued a Report and Recommendation (“RR”) (ECF No. 142) recommending that the Commission’s Motion be granted;

WHEREAS, Defendants Curran, Dunaske, Dunne, Michael Keryc, and Roaldsen filed objections to the RR (ECF Nos. 144-147);

WHEREAS, on March 28, 2022, the Court entered an Order Adopting Report and Recommendation (“March 28, 2022 Order”), which: granted in part the Motion by, *inter alia*, making revisions and adopting the RR with regard to the recommendation to order a civil penalty of \$65,000 as to Salvatore Ciccone; deferred ruling as to the other Defendants; and directed the Commission to identify where the other Defendants originally raised the arguments they asserted in their objections to the R&R, which the Commission did on April 6, 2022 (ECF No. 150);

WHEREAS, on February 9, 2023, the Court issued a Memorandum and Order (ECF No. 151) adopting the RR in full, subject to the modifications identified in the Court’s March 28,

2022 Order;

NOW, THEREFORE:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants Salvatore Ciccone, Dunne, and Michael Keryc are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of 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).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Salvatore Ciccone, Dunne, and Michael Keryc are 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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] 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).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by making use of the mails or any means or instrumentality of interstate commerce, to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities, when not registered with the Securities and Exchange Commission as a broker or dealer, or associated with a registered broker or dealer.

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 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).

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are liable for disgorgement representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amounts set forth in the table below, and a civil penalty in the amounts set forth in the table below pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], for total amounts set forth in the table below:

<u>Defendant</u>	<u>Disgorgement</u>	<u>Prejudgment Interest</u>	<u>Civil Penalty</u>	<u>Total</u>
Salvatore Ciccone	\$0	\$0	\$65,000	\$65,000
Christopher Curran	\$208,933.52	\$53,788.01	\$65,000	\$327,721.53
Ryan Dunaske	\$214,444.92	\$55,206.91	\$65,000	\$334,651.83
Michael Dunne	\$845,409.43	\$217,642.96	\$130,000	\$1,193,052.39
Michael Keryc	\$809,485.17	\$208,394.60	\$130,000	\$1,147,879.77
Ronald Roaldsen	\$253,745.80	\$65,324.55	\$65,000	\$384,070.35

Defendants shall satisfy these obligations by paying these amounts to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendants 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>. Defendants 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.

Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment.

The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court orders issued in this action. Defendants shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may 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. The Court shall retain jurisdiction over the administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

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 Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendants' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants 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 Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each of the Defendant's Consents (Michael Keryc Consent, ECF No. 74-1; Curran Consent, ECF No. 85-1; Dunne Consent, ECF No. 88-1; Roaldsen Consent, ECF No. 92-1; Dunaske Consent, ECF No. 94-1; Salvatore Ciccone Consent, ECF No. 112-1) are incorporated herein with the same force

and effect as if fully set forth herein, and that each Defendant shall comply with all of the undertakings and agreements set forth therein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely 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 each Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by each 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).

VIII.

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.

Dated: _____, _____

UNITED STATES DISTRICT JUDGE