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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiffs,

v.

BRUCE COLE,

Defendants.

Case No. 2:12-cv-08024-AB-JEM

**ORDER DENYING DEFENDANT’S
REQUEST FOR DEDUCTIONS OF
DISGORGMENT AWARD**

Before the Court on remand from the Ninth Circuit is Plaintiff Securities and Exchange Commission’s (“SEC”) Motion for Summary Judgment, filed September 16, 2016. Dkt. No. 98. In December 2016, the Court granted summary judgement against Defendant Bruce Cole and Relief Defendant Nanette Cole (“the Coles”), as well as injunctive relief and disgorgement with prejudgment interest. Dkt. No. 117. The Coles appealed the decision to the Ninth Circuit. Concluding the Court did not err in granting summary judgement for securities fraud violations, the Ninth Circuit vacated and remanded only the Court’s disgorgement award for further proceedings “to ensure that the amount awarded and its distribution is in accordance with *Liu* [*Liu v. SEC*, 591 U.S. 71 (2020)]. Dkt. No. 153 at 9.

1 The Coles filed an Opening Brief requesting deductions to the disgorgement
2 amount. Dkt. No. 170. The SEC filed an Opposition (Dkt. No. 178) and the Coles
3 filed a Reply (Dkt. No. 179). Finding the matter suitable for decision without oral
4 argument, the Court took it under submission on December 3, 2024. Dkt. No. 181. For
5 the following reasons the Court **DENIES** the Coles' requests for deductions.

6 **I. Background**

7 Unless otherwise noted, the following facts are found in the Court's summary
8 judgement order, *Sec. & Exch. Comm'n v. Cole*, No. CV1208024ABJEMX, 2016 WL
9 11746530 (C.D. Cal. Dec. 6, 2016), and have not been disturbed on appeal. Bruce
10 Cole was the chairman and CEO of Mamtek U.S., Inc. ("Mamtek"). He secured
11 financing for Mamtek to build a sucralose factory in Moberly, Missouri. The financing
12 included \$39 million in municipal bonds issued by the City of Moberly. To obtain
13 funds from the bonds, Mamtek was to submit draw requests comprised of invoices
14 and receipts for review by the City's finance manager. If the disbursement was
15 approved, the funds would go to Mamtek.

16 In July 2010, during the development process, Mr. Cole directed one Mamtek
17 employee to create an invoice from Ramwell Industrial Ltd. ("Ramwell") for more
18 than \$4 million in charges related to the sucralose plant. Investors were told that
19 Ramwell would assist in intellectual property matters and installing and maintaining
20 production lines. However, at the time he approved the invoice, Mr. Cole knew
21 Ramwell did not exist, and the services performed and goods represented on the
22 invoice had been fabricated. Mr. Cole also instructed another Mamtek director to sign
23 a falsified contract purporting to create an agreement between Mamtek and Ramwell
24 about paying for engineering services performed on the plant. These falsified
25 documents were submitted to the City of Moberly as part of a draw request.

26 When the request was granted, Mr. Cole directed how the bond proceeds were
27 to be allocated and had \$700,000 of these funds wired to his wife, Relief Defendant
28 Nanette Cole. The same day, he had an additional \$204,167 of these funds wired to

1 Ms. Cole’s bank account. These funds were not used for the sucralose plant and were
2 instead retained by the Coles. In 2011, Mamtek U.S. ran out of funds, ceased doing
3 business, and was forced into liquidation proceedings under Chapter 7 of the
4 Bankruptcy Code.

5 By 2012, state and federal law enforcement had launched investigations into
6 Mr. Cole’s conduct. The SEC brought the instant action, and, in Missouri, Mr. Cole
7 pleaded guilty to two counts of securities fraud and one count of stealing. Based on
8 Mr. Cole’s criminal conviction, this Court granted summary judgment in favor of the
9 SEC because the conviction encompassed the same fraudulent scheme as charged by
10 the SEC. *See* Dkt. No. 117. On appeal, the Ninth Circuit affirmed the finding that Mr.
11 Cole’s scheme to defraud violated Section 17(a), Section 10(b), and Rule 10b-5 of the
12 Exchange Act. Dkt. No. 153 at 3. However, the Ninth Circuit vacated and remanded
13 the Court’s disgorgement award for further proceedings “to ensure that the amount
14 awarded and its distribution is in accordance with *Liu* [*Liu v. SEC*, 591 U.S. 71
15 (2020)],” a case that was decided by the Supreme Court while this action was on
16 appeal. Dkt. No. 153 at 9. The Ninth Circuit observed that this Court “did not award
17 disgorgement in excess of the amounts obtained by the Coles’ underlying fraud,” but
18 instructed further findings on “whether the recovered money was properly directed to
19 the victims rather than the SEC” as required under *Liu*. Dkt. No. 153 at 5-6.

20 **II. Discussion**

21 **a. Deduction of Legitimate Business Expenses**

22 Under *Liu*, the Coles must disgorge net profits from the fraudulent Ramwell
23 scheme. *See Liu*, 591 U.S. at 75. Net profits are the total profits (here, \$904,176
24 funneled from the bond disbursement into Nannette Cole’s personal bank account)
25 minus any legitimate expenses. *Id.* at 84. The Supreme Court left it to lower courts to
26 identify legitimate expenses, but pointed to expenditures such as “lease payments and
27 cancer-treatment equipment,” which were bought with money fundraised for a
28 fraudulent cancer research center, as expenses funded by the ill-gotten gains that

1 “arguably have value independent of fueling a fraudulent scheme.” *Id.* at 92.

2 The Coles first argue that the disgorgement amount should be offset by the
3 alleged \$34 million value of the “IP assets” of Mamtek, U.S., which “became the
4 property of the Bond trustee after” the company went into default. Dkt. No. 170 at 11-
5 12. Without wading into the faulty logic of this claim, the Court cannot accept the
6 appraisal as a legitimate reflection of value conferred on the City’s investors. As the
7 Bankruptcy Court for the Western District of Missouri noted, the appraisal report the
8 Coles rely on is a draft premised on the clearly false assumption that Mamtek U.S. had
9 a completed and operating sucralose manufacturing facility. *See* Dkt. No. 178-1 (Decl.
10 of Donald W. Searles (“Searles Decl.”), Ex. 1 (Memorandum Opinion of the
11 Bankruptcy Court for the Western District of Missouri, granting Plaintiff-Trustee’s
12 motion for partial summary judgment)) at 18. Without evidence of any legitimate
13 value conferred to investors, the Court cannot reach the question of whether the IP’s
14 value constituted a legitimate expense independent of the fraudulent scheme.

15 Next, the Coles seek reduction from the disgorgement amount by \$125,000
16 because Mr. Cole personally invested that amount when Mamtek, Int’l., the parent
17 company of Mamtek, U.S., was founded in 2006. Dkt. No. 170 at 9. However, the
18 timing makes it impossible for that to be a legitimate expense furnished by money he
19 took from the City’s bond disbursement in 2010. The money he claims to have
20 invested into a separate company would be a prior personal investment, disconnected
21 from the bond funds. Assuming all facts he alleged are true, Mr. Cole had no
22 legitimate basis to reimburse to himself for that investment using money from the City
23 of Moberly four years later. Therefore, it is not a legitimate business expense.

24 Finally, the Coles claim Ms. Nanette Cole paid for several business expenses of
25 Mamtek on her personal credit card and from her personal bank account that should be
26 deducted from the disgorgement amount.¹ This is unpersuasive for several reasons.

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28 ¹ The Coles also argue Ms. Cole, as a relief defendant, is not subject to disbursement.

1 First, relief defendants may only avoid disgorgement if they received the funds as
2 “compensation in return for services rendered.” *SEC v. Ross*, 504 F.3d 1130, 1142
3 (9th Cir. 2007). “*Liu* did not override ... existing [Ninth Circuit] case law concerning
4 disgorgement by relief defendants.” *SEC v. Berkeley Healthcare Dynamics, LLC*, No.
5 20-16754, 2022 WL 42807 at *2 (9th Cir. Jan. 5, 2022); *see also SEC v. Yang*, No.
6 5:15-CV-02387-SVW-KK, 2021 WL 1234886 at *6 (C.D. Cal. Feb. 16, 2021), *aff’d*
7 *sub nom. U.S. Sec. & Exch. Comm’n v. Yang*, No. 21-55437, 2022 WL 3278995 (9th
8 Cir. Aug. 11, 2022) (“[D]isgorgement from a relief defendant need not reflect net
9 profits.”). In the Ninth Circuit, “a relief defendant is not required to disgorge ‘profits,’
10 but instead only funds not received in exchange for consideration.” *Id.* (citing *Ross*,
11 504 F.3d at 1142). Thus, the Court need not assess whether Ms. Cole made any
12 legitimate business expenses. Instead, Ms. Cole only must disgorge funds to which
13 she has no legitimate claim. *Id.* Ms. Cole maintains she “was never employed by and
14 had no specific job responsibilities in connection with Mamtek or Ramwell.” Dkt. No.
15 179 at 19. Though she emphasizes she was an “investor,” nothing in her briefings
16 supports a finding that she was owed money she received from Mr. Cole through the
17 bond disbursement. *Id.* The Coles articulated no basis for the Court to find that Ms.
18 Cole performed some service or provided consideration in exchange for the money
19 deposited into her accounts.

20 Even if the Court could properly inquire into whether any of her expenditures
21 were legitimate expenses furnished by the stolen money, the Coles’ evidence does not
22 support a finding that those payments were connected to Mamtek, U.S. at all. Ms.
23 Cole claims that in July 2009, she charged a “balance in excess of \$120,000” on her
24 personal credit card and the “majority of those charges would have been business
25 expenses for the company.” Dkt. No. 170 at 24. As evidence that this money went

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27 This is not true. *See SEC v. Berkeley Healthcare Dynamics, LLC*, No. 20-16754, 2022
28 WL 42807 at *2 (9th Cir. Jan. 5, 2022) (upholding disgorgement against relief
defendants post-*Liu*).

1 toward legitimate business expenses the Coles provided the following:

- 2 • A check for \$9,100 payable to Creditors Interchange, dated July 29, 2010,
3 presumably to contribute to the credit card balance. Dkt. No. 173-28 (Ex.
4 15).
- 5 • A check for \$20,000 payable to Guerrini Law Firm Client Trust, dated July
6 30, 2010. Dkt. No. 173-30 (Ex. 16).
- 7 • An escrow report from the sale of the Coles' home dated July 18, 2012,
8 reflecting a payment of \$91,511.73 to American Express. Dkt. No. 173-31
9 (Ex. 17).

10 She claims the credit card payments covered “necessary business expenses” including
11 “international flights, travel and business costs for Bruce Cole and required company
12 business” but provides no documentation of those expenditures. Dkt. 170-2 (Decl. of
13 Nanette Cole) ¶¶ 2-3. She also claims she “made two large payments totaling \$40,000
14 - \$50,000 around July 2009 to avoid legal action,” presumably explaining her check to
15 the Guerrini Law Firm. Dkt. No. 170 at 24. The Coles again provide no
16 documentation connecting this payment to Mamtek U.S. or the sucralose plant.

17 “Once the SEC establishes a reasonable approximation of defendants' actual
18 profits ... the burden shifts to the defendants to demonstrate that the disgorgement
19 figure was not a reasonable approximation.” *SEC v. Platforms Wireless Int'l Corp.*,
20 617 F.3d 1072, 1096 (9th Cir. 2010) (citations omitted). There can be no such
21 showing when defendants fail to furnish evidence “beyond speculation and ... self-
22 serving statements.” Dkt. No. 153; *U.S. Sec. & Exch. Comm'n v. Cole*, No. 17-56196,
23 2024 WL 445335 at *2 (9th Cir. Feb. 6, 2024). Even if the Coles had provided
24 documentation supporting their claims that these payments were connected to
25 legitimate business expenses as opposed to personal expenses, they do not explain
26 how debts incurred in 2009 could have represented expenses of Mamtek U.S., a
27 company that was not formed until May 2010. For the stated reasons, the Court rejects
28 all deductions related to Ms. Cole's claimed expenditures and finds no evidence of

1 legitimate business expenses related to the money Mr. Cole misappropriated.

2 **b. Joint and Several Liability**

3 Disgorgement is generally not ordered against multiple wrongdoers under a
4 joint-and-several liability theory. *Liu*, 591 U.S. at 83. The purpose of this rule is to
5 ensure defendants are held “liable to account for such profits only as have accrued to
6 themselves ... and not for those which have accrued to another, and in which they have
7 no participation.” *Id.* at 90 (quotation omitted). The Supreme Court acknowledged a
8 “wide spectrum of relationships between participants and beneficiaries of unlawful
9 schemes” and did not “wade into all the circumstances where an equitable profits
10 remedy might be punitive when applied to multiple individuals,” leaving that
11 determination to lower courts. *Id.* at 90-91. The *Liu* Court emphasized that there is
12 “some flexibility to impose collective liability.” *Id.* at 90.

13 Here, joint and several liability is appropriate because the benefit of the
14 misappropriated funds accrued to Mr. and Ms. Cole equally. The Coles’ funds were
15 “comingled” as they were husband and wife. *See Id.* at 91 (approving joint and several
16 liability where defendants did not “suggest that their finances were not commingled,
17 or that one spouse did not enjoy the fruits of the scheme, or that other circumstances
18 would render a joint-and-several disgorgement order unjust”). Ms. Cole stated, though
19 she “was not involved in [Mr. Cole’s] company or its management” that she regularly
20 “incurred ... charges on her personal credit card to enable Mr. Cole’s frequent
21 international travel and costs required for” his businesses. Dkt. No. 170 at 24. Ms.
22 Cole spent the \$904,167 of bond funds on joint personal expenses, to the personal
23 benefit of both Defendant and Relief Defendant. Dkt. No. 98-2 (SUF Nos. 53, 54, 58,
24 60) (misappropriated funds were used for personal expenses, including credit card
25 debt, mortgage payments, insurance payments, and the issuance of a check made out
26 to cash for more than \$281,000). This is sufficient to show that the benefit of the ill-
27 gotten funds accrued to both defendants. *See Yang*, 2021 WL 1234886 at *9 (holding
28 defendant jointly and severally liable with relief defendant for funds received by relief

1 defendant that “accrued” to defendant).

2 **c. Credit for Amounts Recovered for the Benefit of the Bankruptcy**
3 **Estate**

4 This Court’s prior judgment, entered on February 9, 2017, provided that “[a]ny
5 amounts recovered by the bankruptcy trustee in the adversary proceeding *Bruce*
6 *Strauss, Trustee v. Cole (In re Mamtek US, Inc.)*, Case No. 12-2009 (Bank. W.D. Mo.)
7 on behalf of and for the benefit of the bankruptcy estate, with such recovery being
8 final and not subject to further appeal, shall be credited against the total disgorgement
9 amount owed by Defendant Bruce A. Cole and Relief Defendant Nanette H. Cole
10 pursuant to this Final Judgment.” Dkt. No. 130. According to a 2019 bankruptcy court
11 order, which approved the trustee’s motion for settlement, the trustee recovered
12 \$541,000 for the benefit of the Mamtek U.S. bankruptcy estate from the sale of the
13 Coles’ home in Beverly Hills, California. *In re Mamtek US, Inc.*, No. 11-22092-drd,
14 Bk. Dkt. Nos. 363, 366; see also Dkt. No. 178-1, Ex. 3. Thus, the Court **ORDERS**
15 that, upon receipt of proof from the Bankruptcy Trustee of the amount received from
16 the settlement, the SEC shall offset the amount due under this judgement by that
17 amount.

18 **d. Distribution to Harmed Investors**

19 Having confirmed that this Court “did not award disgorgement in excess of the
20 amounts obtained by the Coles’ underlying fraud,” the only remaining question is
21 “whether the recovered money was properly directed to the victims rather than the
22 SEC” as required under *Liu*. Dkt. No. 153 at 5-6. “The equitable nature of the profits
23 remedy generally requires the SEC to return a defendant's gains to wronged investors
24 for their benefit.” *Liu*, 591 U.S. at 88. Here, the SEC has made a sufficient showing
25 that investors were wronged: The investors in the City of Moberly’s \$39 million
26 municipal bond offering, which was intended to finance the construction and
27 operation of a sucralose factory by Cole’s company Mamtek, U.S., suffered pecuniary
28 harm when Mamtek U.S. ran out of funds and ceased doing business in September

1 2011, and was forced into liquidation proceedings under Chapter 7 of the Bankruptcy
2 Code with an outstanding balance of \$36 million on the bonds that had gone into
3 default. *See* Dkt. No. 178-1 (Searls Decl.), Ex. 1 (Memorandum Opinion of the
4 Bankruptcy Court for the Western District of Missouri, granting Plaintiff-Trustee’s
5 motion for partial summary judgment); Ex. 2 (Mamtek U.S. bankruptcy proof of claim
6 in the amount of \$36,050,045.10); *see also* Dkt. No. 98-2, SUF No. 47 (Cole’s
7 diversion of bond proceeds endangered entire project).

8 The SEC has adequately represented it will distribute the disgorged funds to the
9 harmed investors. *SEC v. Beck*, No. 2:22-cv-00812-FWS-JC, 2024 WL 1626280, at
10 *14 (C.D. Cal. Mar. 26, 2024) (SEC stating that it will distribute disgorged funds
11 through a Fair Fund, if feasible, establishes that disgorgement will be “for the benefit
12 of investors”); *SEC v. Mizrahi*, No. CV 19-2284 PA (JEMx), 2020 WL 6114913, at *2
13 (C.D. Cal. Oct. 5, 2020) (concluding that disgorgement was consistent with *Liu* where
14 the SEC stated that it “seeks to recover this sum in disgorgement so that it may return
15 those funds to clients who lost significant sums of money that Mizrahi misused for his
16 fraudulent scheme”). The SEC states that its staff has “made a preliminary
17 determination that a distribution to harmed investors of the awarded amount of
18 disgorgement, if collected, would be feasible as there are a limited number of
19 investors in the case, all of whom are readily identifiable along with the amount of
20 their investments.” Dkt. No. 178-1 (Searls Decl.) ¶2. The SEC confirmed it is
21 “prepared to petition the Court to establish a Fair Fund, through which disgorged
22 funds would be disbursed to victims.” Dkt. No. 178 at 5. Accordingly, the SEC has
23 adequately shown that disgorgement will be for the benefit of the victims.

24 **III. Conclusion**

25 **a. Disgorgement**

26 Having found no evidence of legitimate business expenses related to the ill-
27 gotten gains, and because Mr. Cole misappropriated \$904,167 and Ms. Cole received
28 those funds with no legitimate claim to them, the Court **ORDERS** Mr. and Ms. Cole,

1 jointly and severally, to disgorge the ill-gotten gains in the amount of \$904,167,
2 together with prejudgment interest thereon in the amount of \$119,885, for a total of
3 \$1,024,052 (“the Fund”). Defendant Bruce A. Cole and Relief Defendant Nanette H.
4 Cole shall satisfy this obligation by paying \$1,024,052 to the Securities and Exchange
5 Commission within 14 days after entry of this Final Judgment.

6 Defendants may transmit payment electronically to the Commission, which will
7 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also
8 be made directly from a bank account via Pay.gov through the SEC website at
9 <http://www.sec.gov/about/offices/ofm.htm>. Defendants may also pay by certified
10 check, bank cashier’s check, or United States postal money order payable to the
11 Securities and Exchange Commission, which shall be delivered or mailed to

12 Enterprise Services Center
13 Accounts Receivable Branch
14 6500 South MacArthur Boulevard
15 Oklahoma City, OK 73169

16 and shall be accompanied by a letter identifying the case title, civil action number, and
17 name of this Court; Bruce A. Cole as a defendant in this action and Nanette H. Cole as
18 a relief defendant in this action; and specifying that payment is made pursuant to this
19 Final Judgment.

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

24 The Commission may propose a plan to distribute the Fund subject to the
25 Court’s approval. Such a plan may provide that the Fund shall be distributed pursuant
26 to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The
27 Court shall retain jurisdiction over the administration of any distribution of the Fund
28 and the Fund may only be disbursed pursuant to an Order of the Court.

1 The Commission may enforce the Court’s judgment for disgorgement and
2 prejudgment interest by using all collection procedures authorized by law, including,
3 but not limited to, moving for civil contempt at any time after 14 days following entry
4 of the Final Judgment that entered on February 9, 2017. Defendants shall pay post
5 judgment interest on any amounts from February 9, 2017 pursuant to 28 U.S.C. §
6 1961.

7 **b. Permanent Injunction**

8 Pursuant to the Ninth Circuit’s affirmation of this Court’s finding that Mr. Cole
9 violated the Exchange Act, this Court hereby **ORDERS** that Defendant Bruce A. Cole
10 is permanently restrained and enjoined from violating, directly or indirectly, Section
11 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §
12 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any
13 means or instrumentality of interstate commerce, or of the mails, or of any facility of
14 any national securities exchange, in connection with the purchase or sale of any
15 security:

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

17 (b) to make any untrue statement of a material fact or to omit to state a
18 material fact necessary in order to make the statements made, in the light
19 of the circumstances under which they were made, not misleading; or

20 (c) to engage in any act, practice, or course of business which operates or
21 would operate as a fraud or deceit upon any person.

22
23 It is further **ORDERED** that, as provided in Federal Rule of Civil Procedure
24 65(d)(2), the foregoing paragraph also binds the following who receive actual notice
25 of this Final Judgment by personal service or otherwise: (a) Defendant Bruce A.
26 Cole’s officers, agents, servants, employees, and attorneys; and (b) other persons in
27 active concert or participation with Defendant Bruce A. Cole or with anyone
28 described in (a).

1 It is further **ORDERED** that Defendant Bruce A. Cole is permanently
2 restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the
3 “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of
4 any means or instruments of transportation or communication in interstate commerce
5 or by use of the mails, directly or indirectly:

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

7 (b) to obtain money or property by means of any untrue statement of a material
8 fact or any omission of a material fact necessary in order to make the statements
9 made, in light of the circumstances under which they were made, not
10 misleading; or

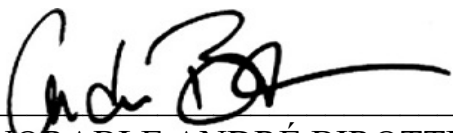
11 (c) to engage in any transaction, practice, or course of business which operates
12 or would operate as a fraud or deceit upon the purchaser.

13
14 It is further **ORDERED** that as provided in Federal Rule of Civil Procedure
15 65(d)(2), the foregoing paragraph also binds the following who receive actual notice
16 of this Final Judgment by personal service or otherwise: (a) Defendant Bruce A.
17 Cole’s officers, agents, servants, employees, and attorneys; and (b) other persons in
18 active concert or participation with Defendant Bruce A. Cole or with anyone
19 described in (a).

20
21 This Court shall retain jurisdiction of this matter for the purposes of enforcing
22 the terms of this judgment.

23
24 **IT IS SO ORDERED.**

25 Dated: January 23, 2025

26 
27 _____
28 HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE