

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

DUNCAN J. MACDONALD, III, et al.,

Defendants.

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Civil Action No. 3:13-cv-02275-M

**FINAL JUDGMENT  
AS TO DEFENDANT JOHN W. KOSOLCHAROEN**

Before the Court is Plaintiff Security and Exchange Commission’s Motion for Remedies and for Entry of Final Judgment as to Defendant John W. Kosolcharoen. ECF No. 14.

On October 10, 2014, Kosolcharoen entered into an Agreed Partial Judgment, in which the Court ordered that “Kosolcharoen shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [of 1933] [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the [Securities Exchange Act of 1934] [15 U.S.C. § 78u(d)(3)]” and that “[t]he Court shall determine the amounts of disgorgement and civil penalty upon motion of the Commission.” ECF No. 11 at 3 (alterations in original). The Court further ordered that, in connection with any motion for remedies, Kosolcharoen shall “be precluded from arguing that she [sic] did not violate the federal securities laws as alleged in the Complaint” and that “solely for purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court.” *Id.* at 4.

The Security and Exchange Commission (“Commission”) now moves for disgorgement, prejudgment interest, and a civil penalty, and for entry of final judgment. ECF No. 14.

Although the Motion's certificate of conference indicates that the Motion is opposed, Defendant did not file a response. *See* ECF No. 19.

The Motion is **GRANTED**. The Court finds that the Commission has sufficiently demonstrated that Kosolcharoen received approximately \$1,169,873.05 in investor funds in connection with Kosolcharoen's securities violations alleged in the Complaint. *See Allstate Ins. Co. v. Receivable Fin. Co.*, 501 F.3d 398, 413 (5th Cir. 2007) ("In actions brought by the SEC involving a securities violation, 'disgorgement need only be a reasonable approximation of profits causally connected to the violation.'"). Kosolcharoen did not respond to the Commission's Motion, and thus the Court has no basis to believe that the Commission's proposed disgorgement figure is unreasonable. *See, e.g., Sec. & Exch. Comm'n v. Hallam*, 42 F.4th 316, 341 (5th Cir. 2022) ("If the SEC carries that burden [to approximate defendant's unjust enrichment], the burden then shifts to the defendant. To rebut the SEC's evidence, the defendant must prove that the requested amount is 'unreasonable' . . ."). Accordingly, the Court determines that Kosolcharoen shall pay \$1,169,873.05 in disgorgement plus prejudgment interest, pursuant to the Agreed Partial Judgment. *See S.E.C. v. Huffman*, 996 F.2d 800, 803 (5th Cir. 1993) ("The district court has broad discretion in fashioning the equitable remedy of a disgorgement order."). The amount of prejudgment interest is \$226,319.69, which is interest on the amount to be disgorged for the period beginning June 17, 2009, the date specified in the Agreed Partial Judgment, through October 10, 2014, the date of the Agreed Partial Judgment. *See* ECF No. 15-1 at 4.

Regarding civil penalties, the Court finds that Kosolcharoen is subject to third-tier civil penalties under § 20(d) of the Securities Act, because the allegations in the Complaint, which the Court accepts as true, demonstrate that Kosolcharoen violated § 17(a)(2) and (3) of the Securities

Act, and each of these violations involved fraud or deceit. *See* ECF No. 10 ¶¶ 44–47. In the absence of any response from Kosolcharoen, the Court grants the Commission’s request to impose a total civil penalty of \$160,000.00.

Accordingly, the Court enters final judgment against Kosolcharoen as follows:

**I.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Kosolcharoen shall pay disgorgement in the amount of \$1,169,873.05, plus prejudgment interest thereon in the amount of \$226,319.69.

**II.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that, 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)], Kosolcharoen shall pay a penalty in the amount of \$160,000.00.

**III.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Kosolcharoen shall satisfy his obligations to pay disgorgement, prejudgment interest, and a civil penalty by paying the amounts ordered to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Kosolcharoen 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>. Defendant 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; John W. Kosolcharoen as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

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

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. Defendant 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 Final 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, Kosolcharoen shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Kosolcharoen'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 Kosolcharoen's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Kosolcharoen 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 Final Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Kosolcharoen by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

**IV.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Court reaffirms and incorporates by reference Sections I–III, V–VII of the Agreed Partial Judgment as to Defendant John W. Kosolcharoen. ECF No. 11.

**V.**

**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.

**SO ORDERED.**

August 9, 2023.

  
BARBARA M. G. LYNN  
SENIOR UNITED STATES DISTRICT JUDGE