

**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 DUNCAN J. MACDONALD, III**

Before the Court is Plaintiff Security and Exchange Commission’s Motion for Remedies and for Entry of Final Judgment as to Defendant Duncan J. MacDonald, III (“Defendant”).

ECF No. 21.

On August 8, 2013, Defendant entered into an Agreed Partial Judgment, in which the Court ordered that Defendant “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. 7 at 4 (alterations in original). The Court further ordered that, in connection with any motion for remedies, Defendant shall “be precluded from arguing that he 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 5.

Separately, Defendant pled guilty to one count of Conspiracy to Commit Wire Fraud (18 U.S.C. §§ 371, 1343) in connection to criminal conduct relating to matters alleged in the Complaint, and was ordered to pay restitution of \$8,808,897 jointly and severally with former defendant Gloria Solomon. *See United States v. Duncan MacDonald III*, No. 3:13-cr-00220-B, ECF Nos. 10, 41 (N.D. Tex.).

The Security and Exchange Commission (“Commission”) now moves for disgorgement and for entry of final judgment. ECF No. 21. The Commission withdraws its claim for a civil penalty and prejudgment interest on the disgorgement amount. Although the Motion’s certificate of conference indicates that the Motion is opposed, Defendant did not timely file a response. *See* ECF No. 22.

The Motion is **GRANTED**. The Court finds that the Commission has sufficiently demonstrated that Defendant received approximately \$8,808,897 in investor funds in connection with the 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.’”). Defendant 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 Defendant is liable for disgorgement of \$8,808,897, representing net profits gained as a result of the conduct alleged in the Complaint.

Pursuant to the Commission's request, that amount is deemed satisfied by the restitution ordered in the Criminal Matter. Accordingly, the Court enters final judgment against Defendant as follows:

**I.**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are 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.

**II.**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the

Securities Act of 1933 (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.

**III.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise 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].

**IV.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by, directly or indirectly, 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 other than an exempted security or commercial paper, bankers' acceptances, or commercial bills without being registered as a broker or dealer with the Commission, or being associated with a broker or dealer registered with the Commission.

**V.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or

otherwise are permanently restrained and enjoined from directly or indirectly soliciting or accepting funds from any person or entity for any unregistered offering of securities.

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant is liable for disgorgement of \$8,808,897, representing net profits gained as a result of the conduct alleged in the Complaint, jointly and severally with Defendant Gloria Solomon, but that this amount is deemed satisfied by the restitution ordered in *United States v. Duncan J. MacDonald, III*, No. 3:13-CR-00220, ECF No. 41 (N.D. Tex.).

**VII.**


**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.

**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. 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 Judgment forthwith and without further notice.

**SO ORDERED.**

September 27, 2023.

  
BARBARA M. G. LYNN  
SENIOR UNITED STATES DISTRICT JUDGE