

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

OLEKSANDR IEREMENKO, *et al.*,

Defendants.

Civil Action No. 19-505

ORDER

THIS MATTER comes before the Court on Plaintiff United States Securities and Exchange Commission’s (the “Commission”) Motion for Default Judgment, ECF No. 111, pursuant to Federal Rule of Civil Procedure 55(b),¹ against Defendants Oleksandr Ieremenko (“Ieremenko”) and Andrey Sarafanov (“Sarafanov” and, together with Ieremenko, the “Defaulting Defendants”);

and it appearing that this action arises out of a fraudulent scheme to hack the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system and to monetize the stolen information through securities trading, Compl. ¶ 1, ECF No. 1;

and it appearing that the crux of the scheme was to access nonpublic “test filings” containing, among other things, earnings announcements of publicly-traded companies before the information was made available to the market, *id.* ¶ 2;

¹ In deciding a motion for default judgment, “the factual allegations in a complaint, other than those as to damages, are treated as conceded by the defendant.” *DIRECTV Inc. v. Pepe*, 431 F.3d 162, 165 (3d Cir. 2005).

and it appearing that from May 2016 through at least October 2016, Ieremenko used a variety of deceptive means to gained access to thousands of nonpublic “test filings” on the EDGAR system, id. ¶¶ 2, 56-57;

and it appearing that Ieremenko then passed the stolen information to Sarafanov and other traders (collectively the “Trader Defendants”), who used the hacked nonpublic information to make trades, by either buying securities or selling them short, based on how they anticipated the market would respond to the information, id. ¶¶ 3, 60;

and it appearing that the Trader Defendants kicked back a portion of their trading profits to Ieremenko in exchange for the hacked information, id. ¶ 3;

and it appearing that this scheme resulted in over \$4.1 million of gross ill-gotten gains from trading on the hacked EDGAR filings, id. ¶ 4; Declaration of Dr. Thomas A. Dunn (“Dunn Decl.”) ¶ 14, ECF No. 111.2;

and it appearing that on January 15, 2019, the Commission filed the instant Complaint against Defendants, ECF No. 1;

and it appearing that the Defaulting Defendants have failed to answer or otherwise respond to the Complaint as of the date of this Order;

and it appearing that on September 10 and 11, 2019, the Commission requested that the Clerk of the Court enter default against Ieremenko and Sarafanov, respectively, ECF Nos. 58, 62;

and it appearing that on September 11, 2019, the Clerk entered default on the Defaulting Defendants for failure to plead or otherwise defend;

and it appearing that on December 21, 2020, the Commission filed the instant Motion seeking judgment against the Defaulting Defendants, ECF No. 111;²

and it appearing that default judgment may only be entered against a properly-served defendant, see E.A. Sween Co., Inc. v. Deli Express of Tenafly, LLC, 19 F. Supp. 3d 560, 567 (D.N.J. 2014);

and it appearing that the docket reflects that the Defaulting Defendants were properly served in May and June of 2019, see ECF No. 28 (Court Order approving service via email and periodic publication in the New York Times International Edition); ECF No. 39.1 (declaration of Laura D'Allaird averring completion of alternative service pursuant to Court's Order);

and it appearing that the Court must determine whether it has jurisdiction over the action and the parties before entering a default judgment, see Animal Sci. Prods., Inc. v. China Nat'l Metals & Minerals Imp. & Exp. Corp., 596 F. Supp. 2d 842, 848 (D.N.J. 2008);

and it appearing that the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the Complaint raises questions of federal securities law under the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77a, et seq., and the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78a, et seq., Compl. ¶¶ 159-172;³

and it appearing that the Court has personal jurisdiction⁴ over the Defaulting Defendants, as the Defaulting Defendants have purposefully availed themselves of the privileges of conducting

² The claims against the other Defendants named in the Complaint have been otherwise resolved or dismissed.

³ The Securities Act and the Exchange Act both apply extraterritorially. See 15 U.S.C. § 77v(c), 15 U.S.C. § 78aa(b).

⁴ The Securities and Exchange Acts authorize nationwide service of process and permit the exercise of personal jurisdiction to the full extent of the Due Process Clause of the Fifth Amendment. See 15 U.S.C. §§ 77v(a), 78aa; Pinker v. Roche Holdings Ltd., 292 F.3d 361, 369 (3d Cir. 2002). When a federal statute authorizes nationwide service of process, personal jurisdiction can be established when a defendant has minimum contacts with the United States as a whole. See Pinker, 292 F.3d at 371-73 (3d Cir. 2002); SEC v. One or More Unknown Traders in the Sec. of Fortress Inv. Grp., LLC, No. 17-01287, 2018 WL 4676043, at *4 (D.N.J. Sept. 27, 2018). Under the minimum contacts analysis, the Court considers whether the defendant "purposefully avails itself of the privilege of conducting activities

activities within the United States by: (1) hacking the Commission's EDGAR system to steal the unpublished earning reports of publicly-traded companies and distributing this nonpublic information to an international network of securities traders, Compl. ¶¶ 55-59 (Ieremenko); and (2) using the stolen information to trade in U.S. securities before the information was released to the market and earning significant profits from trading on the stolen information, *id.* ¶¶ 59-60, 63, 88-89 (Sarafanov);

and it appearing that venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because the servers from which the material nonpublic information was hacked were located in Middlesex County, New Jersey, *id.* ¶¶ 9, 54;

and it appearing that before entering a default judgment, the Court must also determine whether the Complaint sufficiently pleads a cause of action and whether the Commission has proven damages, *Chanel, Inc. v. Gordashevsky*, 558 F. Supp. 2d 532, 536, 538 (D.N.J. 2008);

and it appearing that the Commission alleges that the Defaulting Defendants violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, by carrying out a scheme to infiltrate the Commission's EDGAR system and monetize the hacked information through securities trading, Compl. ¶¶ 159-72;

and it appearing that to state a claim under Section 17(a) of the Securities Act or Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the Commission must show that (1) the Defaulting Defendants made material misrepresentations or omissions, or employed a device, scheme, or artifice to defraud; (2) with scienter; (3) in connection with the offer, purchase, and/or

within the forum . . . , thus invoking the benefits and protections of its laws.” *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 877 (2011) (citations and quotation marks omitted).

sale of a security; and (4) in connection with interstate commerce, SEC v. Desai, 145 F. Supp. 3d 329, 335 (D.N.J. 2015) (internal citations omitted);⁵

and it appearing that the Defaulting Defendants (1) perpetrated a scheme to defraud by illegally accessing nonpublic financial information and sharing the hacked information with an international network of securities traders, Compl. ¶¶ 2, 55-59 (Ieremenko), and using the nonpublic information to purchase and sell U.S. securities, id. ¶¶ 2, 59 (Sarafanov), which resulted in over \$4 million in illicit profit, id. ¶ 64; (2) had a clear intent to defraud, as inferred by the alleged actions that they took in furtherance of the scheme, see Valicenti Advisory Servs. v. SEC, 198 F.3d 62, 65 (2d Cir. 1999) (explaining that scienter can be inferred from circumstantial evidence); see also Compl. ¶¶ 55-57 (alleging that Ieremenko employed a variety of deceptive techniques to hack into the EDGAR system to steal information); id. ¶¶ 3, 61 (alleging that Sarafanov used the known stolen information to purchase or sell short U.S. securities before the information was publicly available and concealed his receipt of the hacked information by using accounts in others' names); (3) the fraudulent scheme resulted in the trade of securities, id. ¶¶ 2, 60; and (4) the fraudulent scheme occurred over international and interstate boundaries, id. ¶¶ 3, 10, 18;

and it appearing that the Complaint thus sufficiently pleads liability as to the Defaulting Defendants;⁶

⁵ Section 17(a) of the Securities Act prohibits fraudulent conduct in the offer or sale of securities, while Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraudulent conduct in connection with the purchase or sale of securities. See 15 U.S.C. §§ 77q(a), 78j(b); 17 C.F.R. § 240.10b-5. Regardless, the standard for stating a claim under these provisions is “essentially the same.” SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1467 (3d Cir. 1996).

⁶ The Commission additionally alleged that Sarafanov and the other Trader Defendants aided and abetted violations of Securities Act Section 17(a) and Exchange Act Section 10(b) (Counts 3 and 4). Because the remedies for aiding and abetting liability are the same as those available for primary violations under these Sections, see 15 U.S.C. § 78t, the Court need not address the Commission’s arguments under Counts 3 and 4 of the Complaint.

and it appearing that before entering default judgment, the Court must consider: “(1) prejudice to the plaintiff if default is denied; (2) whether the defendant appears to have a litigable defense; and (3) whether defendant’s delay is due to culpable conduct,” Walker v. Pennsylvania, 580 F. App’x 75, 78 (3d Cir. 2014) (citations and quotation marks omitted);

and it appearing that the Commission will suffer prejudice absent an entry of default judgment as it will have no other means of obtaining relief;

and it appearing that accepting the allegations in the Complaint as true, the Defaulting Defendants do not appear to have a meritorious defense, see HICA Educ. Loan Corp. v. Surikov, No. 14-1045, 2015 WL 273656, at *3 (D.N.J. Jan. 22, 2015) (weighing this factor in plaintiff’s favor where the defendant failed to respond with “evidence or facts containing any information that could provide the basis for a meritorious defense”);

and it appearing that the Defaulting Defendants’ failure to respond to this lawsuit, in the face of allegations of substantial financial wrongdoing, is sufficient to infer culpability, see U.S. Small Bus. Admin. v. Silver Creek Const. LLC, No. 13-6044, 2014 WL 3920489, at *5 (D.N.J. Aug. 11, 2014); Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc., 175 F. App’x 519, 523 (3d Cir. 2006) (holding that a defendant’s failure to respond to communications from plaintiff and court support a finding of culpability);

and it appearing that although the Court accepts the facts pled in the Complaint “as true for the purpose of determining liability, the plaintiff must prove damages,” MoroccanOil, Inc. v. JMG Freight Grp. LLC, No. 14-5608, 2015 WL 6673839, at *2 (D.N.J. Oct. 30, 2015);

and it appearing that the Commission has requested that the Court (1) permanently enjoin the Defaulting Defendants from future securities law violations; (2) order Ieremenko to pay a civil monetary penalty of \$12,405,045, equal to three times the gross profits generated by the fraud

scheme at issue in the Complaint; and (3) order Sarafanov to pay a civil monetary penalty of \$3,283,305, three times the gross profits generated from the accounts he traded, see Compl. ¶ 144; Dunn Decl. Table 2;⁷

and it appearing that the Court is “empowered to issue injunctions commanding compliance with the [federal securities] laws and [the Commission’s] regulations promulgated thereunder,” SEC v. Savoy Indus., Inc., 665 F.2d 1310, 1317 n.54 (D.C. Cir. 1981);

and it appearing that in determining whether an injunction is an appropriate remedy, the Court considers (1) the degree of the defendant’s scienter, (2) whether the infraction was isolated or recurring in nature, (3) defendant’s recognition of his or her wrongful conduct, (4) the sincerity of assurances against future violations, and (5) the likelihood that future violations may occur based on defendant’s professional occupation, SEC v. Bonastia, 614 F.2d 908, 912 (3d Cir. 1980);⁸

and it appearing that an injunction is appropriate here because: (1) as discussed above, the Defaulting Defendants acted intentionally in carrying out the scheme to defraud the U.S. securities markets; (2) the Defaulting Defendants perpetrated the scheme over several months, ending in the fall of 2016 when the Commission patched the EDGAR software in response to a detected attack on the system, Compl. ¶¶ 2, 117; (3) by failing to appear, the Defaulting Defendants have shown no respect for U.S. securities laws and the integrity of U.S. markets, and have failed to take responsibility for their unlawful conduct; (4) similarly, by failing to appear, the Defaulting Defendants have offered no assurances that they will act lawfully in the future; and (5) future violations are likely given that Ieremenko began this hacking scheme while he was being

⁷ Dr. Dunn assessed the trading activity of the Defaulting Defendants from May 3, 2016 through October 31, 2016 and calculated the gross profits earned by each Trader Defendants on hacked trades during this period. See Dunn Decl.

⁸ Unlike injunctions in the private-litigant context, the Commission need not show the risk of irreparable injury or the unavailability of adequate remedies at law. See, e.g., SEC v. Unifund SAL, 910 F.2d 1028, 1035-36 (2d Cir. 1990).

investigated for conducting a separate fraudulent scheme on the U.S. securities market, see SEC v. Dubovoy, No. 15-6076 (D.N.J.) (alleging that Ieremenko, among others, stole nonpublic press releases from American newswire services in order to trade and profit on the material information contained therein);

and it appearing that Section 21A of the Exchange Act permits the Commission to seek a civil penalty against any person who violates the Exchange Act that “shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase, sale, or communication,” 15 U.S.C. §§ 78u-1(a)(1)-(2);

and it appearing that Section 21A of the Exchange Act applies because the Defaulting Defendants profited from the trades they executed while in possession of material nonpublic information—namely the unpublished “test filings” stolen from the EDGAR system, Compl. ¶¶ 1-4, 55-64;

and it appearing that in setting the penalty amount, the Court considers “(1) the egregiousness of the defendant’s violations; (2) the isolated or recurrent nature of the violations; (3) the degree of the scienter; (4) the amount of illegal profits; and (5) the deterrent effect of the penalty in light of defendant’s net worth,” SEC v. Johnson, No. 02-5490, 2004 WL 5561799, at *5 (D.N.J. Aug. 27, 2004);

and it appearing that because the Defaulting Defendants have not contested the Commission’s calculations, and based on the Court’s discussion above, the Court will impose the following penalties, equal to three times the Defaulting Defendants’ gross profits:

- Ieremenko: \$12,405,045⁹
- Sarafanov: \$3,283,305

IT IS on this 29th day of July, 2021;

ORDERED that the Commission's Motion for Default Judgment, ECF No. 111, is **GRANTED**; and it is further

ORDERED that judgment is entered against the Defaulting Defendants in the following amounts:

- a) Defendant Oleksandr Ieremenko is liable for a monetary penalty of \$12,405,045;
 - b) Defendant Andrey Sarafanov is liable for a monetary penalty of \$3,283,305; and
- it is further

ORDERED that Defaulting Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request, or by payment made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>, or 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

⁹ Under Section 21A of the Exchange Act, a defendant's penalties should consider the profits generated by traders who the defendant tipped. See SEC v. Rajaratnam, 918 F.3d 36, 43-44 (2d Cir. 2019); SEC v. Gupta, No. 11-7566, 2013 WL 3784138, at *2 & n.4 (S.D.N.Y. July 17, 2013), aff'd 569 F. App'x 45 (2d Cir. 2014). For this reason, Ieremenko is being held accountable for the profits generated by the Defendant Traders who benefitted directly from the information stolen by Ieremenko and passed on to the traders.

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; and it is further

ORDERED that that Defaulting Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action, and that by making this payment, the Defaulting Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to the Defaulting Defendants; and it is further

ORDERED that the Commission's request for injunctive relief is **GRANTED**, and the Defaulting Defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are enjoined from future violations of Section 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), 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.

/s Madeline Cox Arleo

MADELINE COX ARLEO
UNITED STATE DISTRICT JUDGE