

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Securities and Exchange Commission,
Plaintiff,
v.
Jacob C. Glick,
Defendant.

No. CV-21-00075-PHX-JJT

FINAL JUDGMENT AS TO DEFENDANT JACOB C. GLICK

At issue is the Motion of Plaintiff Securities and Exchange Commission (“SEC”) for Remedies as to Defendant Jacob C. Glick (Doc. 40). In its Order dated June 6, 2022, the Court granted Plaintiff’s request to file the instant motion separately from its Motion for Summary Judgment and gave Defendant 30 days after service of any Motion for Remedies to file an Opposition. (Doc. 31.) Plaintiff filed the instant motion on September 13, 2022. The time to oppose the motion lapsed on October 13, 2022, and Defendant has filed no Opposition. Local Rule 7.2(i) provides that “if the unrepresented party or counsel does not serve and file the required answering memoranda, . . . such non-compliance may be deemed a consent to the denial or granting of the motion and the Court may dispose of the motion summarily.” Accordingly, the Court deems Defendant’s failure to file an Opposition to Plaintiff’s Motion for Remedies as a consent to the granting of the motion.

In its August 15, 2022 Order granting Plaintiff's Motion for Summary Judgment (Doc. 39), the Court found that Defendant violated: (1) Section 206(1) of the Investment

1 Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. § 80b-6(1); (2) Section 206(2) of the
 2 Advisers Act, 15 U.S.C. § 80b-6(2); (3) Section 10(b) of the Securities Exchange Act of
 3 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R.
 4 § 240.10b-5(b); (4) Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-
 5(a) and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c); and (5) Section
 6 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R.
 7 § 275.204-2, by aiding and abetting. The Court permanently enjoined Defendant and his
 8 agents from violating these same provisions. The Court stated that it would enter final
 9 judgment after it reached a decision regarding remedies.

10 In its Motion for Remedies, Plaintiff requests that the Court order Defendant to pay,
 11 as a result of his violations of the aforementioned provisions, disgorgement in the amount
 12 of \$116,594 plus prejudgment interest of \$26,314 and civil penalties in the amount of
 13 \$725,140. (Doc. 40 at 1-5.) The Court will discuss these remedies in turn.

14 The Court is persuaded that Plaintiff’s disgorgement figure of \$116,594 “reasonably
 15 approximates the amount of unjust enrichment” that Defendant received as a result of his
 16 illegal conduct. *See SEC v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1096 (9th Cir.
 17 2010). The SEC’s disgorgement figure is well-supported by the evidence and is reasonable,
 18 as it includes Defendant’s ill-gotten gains from misleading and defrauding multiple advisory
 19 clients, less the value of certain ill-gotten gains that have been repaid. (*See* Doc. 40 at 1-2;
 20 Doc. 40-1, Decl. of Theresa M. Melson, at ¶¶ 4-5; Doc. 40-2, Decl. of Daniel J. F. Peabody,
 21 at ¶¶ 4-10; Doc. 35, SEC’s Separate Statement of Undisputed Facts, at ¶¶ 35, 46-49, 58-59.)
 22 Defendant has failed meet his burden to rebut the SEC’s disgorgement figure and
 23 demonstrate that it is not a reasonable approximation. *See Platforms Wireless*, 617 F.3d at
 24 1096. Indeed, Defendant has entirely failed to respond. Finally, prejudgment interest of
 25 \$26,314 is appropriate to ensure that Defendant, as the wrongdoer, does not profit from the
 26 illegal activity. *See SEC v. Janus Spectrum, LLC*, Case No. CV-15-609-PHX-SMM, 2017
 27 WL 4870377, at *13 (D. Ariz., Aug. 8, 2017) (citing *SEC v. Manor Nursing Ctr., Inc.*, 458
 28 F.2d 1082, 1105 (2d Cir. 1972)); *see also* Doc. 40-1 at ¶ 6.

As for civil penalties, federal securities law provides for three tiers of penalties for violations of the Securities Act and the Advisers Act, with the amount of the penalty “determined by the court in light of the facts and circumstances.” 15 U.S.C. §§ 78u(d)(3)(B), 80b-9(e)(2). Second-tier and third-tier penalties may be imposed for violations that involve “fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement,” with third-tier penalties further requiring that “such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.” *Id.* The Ninth Circuit has articulated five factors for courts to consider in determining the appropriate amount of penalties: (i) the degree of scienter involved; (ii) the isolated or recurrent nature of the infraction; (iii) the defendant’s recognition of the wrongful nature of his conduct; (iv) the likelihood that, based on the defendant’s occupation, future violations might occur; and (v) the sincerity of the defendant’s assurances against future violations. *SEC v. Murphy*, --- F.4th ----, 2022 WL 4866712, at *10 (9th Cir. 2022) (citing *SEC v. Murphy*, 626 F.2d 633 (9th Cir. 1980)). Applying these factors, Plaintiff asserts that Defendant should pay three inflation adjusted third-tier penalties of \$207,183 and one inflation adjusted second-tier penalty of \$103,591, for a total amount of \$725,140. (Doc. 40 at 2-5; Doc. 40-1 at ¶ 7, and Ex. 4.)

The Court agrees with Plaintiff’s analysis of the appropriate civil penalties. In its August 15, 2022 Order, the Court discussed the *Murphy* factors in the context of granting a permanent injunction against Defendant and his agents. (Doc. 39 at 2.) For the same reasons stated in that Order, the Court finds the *Murphy* factors weigh in favor of imposing significant penalties for Defendant’s violations. The Court further finds that three of these violations resulted in substantial losses or created a significant risk of substantial losses to other persons, warranting the imposition of third-tier penalties.

As set forth in Plaintiff’s Motion for Summary Judgment (Doc. 34) and its Motion for Remedies, Defendant breached his fiduciary duty and violated Sections 206(1) and 206(2) of the Advisers Act and obtained \$49,594 in advisory fees by defrauding his Advanced Practice Advisors, LLC (“APA”) advisory clients and placing their funds in

1 unsuitable investments that resulted in over \$1.9 million in losses despite Defendant's
2 representations and his fiduciary duty to place their money in only suitable investments.
3 Additionally, Defendant violated Sections 206(1) and 206(2) of the Advisers Act and
4 breached his fiduciary duty when he obtained \$67,000 in ill-gotten gains by defrauding an
5 elderly widowed advisory client by, among other things, using over half of her \$675,000
6 investment to pay his personal and other expenses and by placing the remaining funds in a
7 long-term, illiquid, unsuitable real estate investment that returned no profits to her.
8 Defendant breached his fiduciary duty and violated Sections 206(1) and 206(2) of the
9 Advisers Act when he enticed two of his advisory clients to invest in a fraudulent private
10 placement offering through material misrepresentations and omissions and when he
11 subsequently defalcated or embezzled their \$250,000 investment for his personal use.
12 Defendant violated Section 10(b) of the Exchange Act and Rule 10b-5(b) and obtained the
13 \$250,000 investment from these advisory clients by making material misrepresentations
14 and omissions in soliciting their investment in the fraudulent private placement offering
15 and by misappropriating their funds for his personal use. Further, Defendant violated
16 Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) by engaging in a scheme to
17 defraud the advisory clients who invested \$250,000 in his private placement offering by
18 concealing his fraudulent conduct and continuing to make material misrepresentations and
19 omissions to them, including by making payments to them using some of their own
20 principal investment and by repaying them with funds he obtained from another client.

21 Finally, Defendant violated Section 204(a) of the Advisers Act and Rule 204-2(a)(7)
22 by using his personal cellphone to give investment advice via text message to advisory
23 clients and then destroying those communications when he sold his cellphone, despite
24 being repeatedly instructed by APA that he was required to preserve client communications
25 regarding investment advice. The Court agrees with Plaintiff that although this constituted
26 "reckless disregard of a regulatory requirement," it arguably did not result in substantial
27 losses or a significant risk of such losses. *See* 15 U.S.C. § 80b-9(e)(2).

28

1 In sum, three third-tier penalties of \$207,183 are warranted for Defendant's
2 violations of Sections 206(1) and 206(2) of the Advisers Act, Section 10(b) of the
3 Exchange Act and Rule 10b-5(b), and Section 10(b) of the Exchange Act and Rules 10b-
4 5(a) and (c), which resulted in either substantial losses or a significant risk of such losses.
5 One second-tier penalty of \$103,591 is warranted for Defendant's violation of Section
6 204(a) of the Advisers Act and Rule 204-2(a)(7), which arguably did not result in either
7 substantial losses or a significant risk of such losses. In total, Defendant shall pay civil
8 penalties in the amount of \$725,140, in addition to disgorgement of \$116,594 and
9 prejudgment interest of \$26,314.

10 The Court now enters Final Judgment as to Defendant Jacob C. Glick:

11 **I.**

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant is
13 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of
14 the Exchange Act and Rule 10b-5 thereunder, by using any means or instrumentality of
15 interstate commerce, or of the mails, or of any facility of any national securities exchange,
16 in connection with the purchase or sale of any security:

- 17 (a) to employ any device, scheme, or artifice to defraud;
18 (b) to make any untrue statement of a material fact or to omit to state a material
19 fact necessary in order to make the statements made, in the light of the circumstances under
20 which they were made, not misleading; or
21 (c) to engage in any act, practice, or course of business which operates or would
22 operate as a fraud or deceit upon any person.

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

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 206 of Advisers Act by use of the mails or means and instrumentalities of interstate commerce:

- (a) to employ devices, schemes or artifices to defraud clients or prospective clients; or
 - (b) engage in transactions, practices, or courses of business which operate as a fraud or deceit upon clients or prospective clients.

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 Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 204 of the Advisers Act, and Rule 204-2(a) thereunder, by failing to make and keep required books and records related to an investment advisory business.

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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$116,594, representing net profits gained as a result of the conduct alleged in the Complaint and as set forth in the SEC's Motion for Summary

1 Judgement and its Motion for Remedies, together with prejudgment interest thereon in the
 2 amount of \$26,314, and a civil penalty in the amount of \$725,140 pursuant to the Securities
 3 Act and the Advisers Act. *See* 15 U.S.C. §78u(d)(3); 15 U.S.C. 80b-9(e). Defendant shall
 4 satisfy this obligation by paying the Securities and Exchange Commission within 30 days
 5 after entry of this Final Judgment.

6 Defendant may transmit payment electronically to the Commission, which will
 7 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be
 8 made directly from a bank account via Pay.gov through the SEC website at
 9 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check,
 10 bank cashier's check, or United States postal money order payable to the Securities and
 11 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 (*SEC v. Jacob C. Glick*), the
 17 civil action number (No. CV-21-00075-PHX-JJT), and the name of this Court (USDC:
 18 District of Arizona); “Jacob C. Glick” should be identified as the defendant in this action;
 19 and specifying that payment is made pursuant to this Final Judgment.

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

24 The Commission may enforce the Court’s judgment for penalties by the use of all
 25 collection procedures authorized by law, including the Federal Debt Collection Procedures
 26 Act, 28 U.S.C. § 3001 *et seq.*, and moving for civil contempt for the violation of any Court
 27 orders issued in this action. Defendant shall pay post judgment interest on any amounts due
 28 after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The

1 Commission shall hold the funds, together with any interest and income earned thereon
2 (collectively, the “Fund”), pending further order of the Court.

The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury, or, if the Commission determines it is feasible, the Commission may propose a plan to distribute all or part of 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.

10 Regardless of whether any such Fair Fund distribution is made, amounts ordered to
11 be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the
12 government for all purposes, including all tax purposes. To preserve the deterrent effect of
13 the civil penalty, Defendant shall not, after offset or reduction of any award of
14 compensatory damages in any Related Investor Action based on Defendant's payment of
15 disgorgement in this action, argue that he is entitled to, nor shall he further benefit by,
16 offset or reduction of such compensatory damages award by the amount of any part of
17 Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any
18 Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after
19 entry of a final order granting the Penalty Offset, notify the Commission's counsel in this
20 action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair
21 Fund, as the Commission directs. Such a payment shall not be deemed an additional civil
22 penalty and shall not be deemed to change the amount of the civil penalty imposed in this
23 Judgment. For purposes of this paragraph, a "Related Investor Action" means a private
24 damages action brought against Defendant by or on behalf of one or more investors based
25 on substantially the same facts as alleged in the Complaint in this action.

V.

27 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that any debt for
28 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under

1 this Final Judgment entered in connection with this proceeding, is a debt for the violation
2 by Defendant of the federal securities laws or any regulation or order issued under such
3 laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

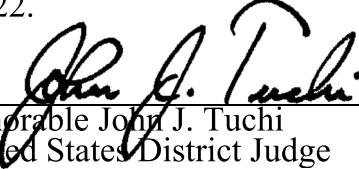
4 **VI.**

5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this Court
6 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final
7 Judgment.

8 **VII.**

9 **IT IS FURTHER ORDERED** that there being no just reason for delay, pursuant
10 to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this
11 Final Judgment forthwith and without further notice, and to close this matter.

12 Dated this 18th day of October, 2022.

13 
14 Honorable John J. Tuchi
United States District Judge

15
16
17
18
19
20
21
22
23
24
25
26
27
28