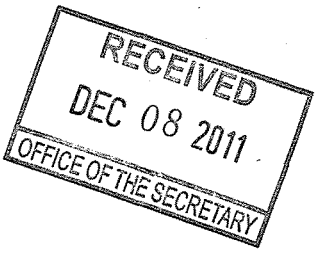
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 7, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14458

In the Matter of

LEILA C. JENKINS,

Respondent.



DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT LEILA C. JENKINS

The Division of Enforcement ("Division"), pursuant to Rule 250 of the Commission Rules of Practice, 17 C.F.R. § 201.250, and with leave of the Administrative Law Judge, hereby files this motion for summary disposition ("Motion") against Respondent Leila C. Jenkins ("Jenkins" or "Respondent"). All facts necessary for a summary disposition have previously been resolved by the entry of a final judgment against Jenkins on June 30, 2011 by the United States District Court for the District of Rhode Island in the civil action entitled Securities and Exchange Commission v. Locke Capital Management, Inc., and Leila C. Jenkins, Case No. 09-100-S. Under relevant legal precedents, Jenkins is precluded from attempting to re-litigate in these proceedings the findings of facts and conclusions of law in the district court action. Therefore, the Division asserts that summary disposition is appropriate and that sanctions against Jenkins are in the public interest and should be imposed.

I. INTRODUCTION

On March 9, 2009, the Commission filed a civil injunctive action entitled Securities and Exchange Commission v. Locke Capital Management, Inc., and Leila C. Jenkins, No. 09-100-S ("Civil Action"), in the United States District Court for the District of Rhode Island ("Court") against Jenkins and her advisory firm, Locke Capital Management, Inc. ("Locke").[1] See Sevilla Decl., ¶ 2.

On June 30, 2011, the Court entered final judgments in the Civil Action against Locke and Jenkins permanently enjoining them from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 207 of the Investment Advisers Act of 1940 ("Advisers Act"). The Court also permanently enjoined Jenkins from aiding and abetting violations of, Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a)(6), (8), (10), (15), & (16) and 206(4)-1(a)(5) thereunder. In addition, the Court ordered that Locke and Jenkins were jointly and severally liable for the payment of disgorgement in the amount of $1,781,520, plus prejudgment interest of $110,956, and the Court also ordered Locke and Jenkins each to pay a civil penalty of $1,781,520. See Sevilla Decl., ¶¶ 5-7; Locke Final J., ¶¶ I-VIII (at Appendix, Exhibit D); Jenkins Final J., ¶¶ I-VII (at Appendix, Exhibit E).

On July 8, 2011, the above-captioned administrative proceedings were instituted against Jenkins pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act. On the same date, proceedings were instituted against Locke pursuant to Section 203(e) of the

[1] In support of this Motion, the Division submits an Appendix containing the Declaration of Naomi J. Sevilla ("Sevilla Decl.") and true and accurate copies of various pleadings and orders from the Civil Action, including the complaint ("Compl."), the Court's default judgment opinion against Locke ("Default Op."), the Court's summary judgment opinion against Jenkins ("SJ Op."), and the final judgments against Locke and Jenkins (respectively, "Locke Final J." and "Jenkins Final J."). Pursuant to Commission Rule 323, 17 C.F.R. § 201.323, the administrative law judge may take judicial notice of the foregoing filings and their contents.

Advisers Act (A.P. File No. 3-14457). The Division seeks permanent investment adviser, broker, and dealer associational bars against Jenkins based on the injunction that the Court entered against Jenkins in the Civil Action.

II. BACKGROUND

A. Allegations in the Complaint

In its complaint in the Civil Action, the Commission alleged that, from at least 2003 through 2009, Locke, an investment adviser registered with the Commission since 1997, and Jenkins, Locke's sole owner and its president, chief executive officer, and chief investment officer, made numerous materially false or misleading statements about Locke's assets under management and other aspects of Locke's business in Locke's periodic filings with the Commission and in marketing materials and other communications to Locke's clients and prospective clients. See Sevilla Decl., ¶ 2; Compl., ¶¶ 1, 8, 9 (at Appendix, Exhibit A).

Specifically, the complaint alleged that, since late 2006, Locke and Jenkins told clients, potential clients, and the Commission that Locke had more than $1 billion in assets under management (and sometimes as much as $1.6 billion), whereas the assets of Locke's real clients comprised only a small fraction of that figure (less than $165 million). Compl., ¶ 1. Locke allegedly misstated its assets under management in numerous of its periodic Form ADV filings with the Commission, as well as in written materials widely available to clients and prospective clients, such as marketing brochures, due diligence questionnaires, and online electronic databases. Compl., ¶¶ 11-15. The complaint also alleged that Jenkins made misrepresentations about Locke's assets under management in written communications directly with individual clients and prospective clients and during meetings with prospective clients. Compl., ¶¶ 16-17.

The complaint further alleged that Locke invented the existence of several large advisory client accounts supposedly based in Switzerland and that Locke's artificially inflated assets under management were attributable to these accounts. Compl., ¶ 1. According to the complaint, since at least 2000, Jenkins told Locke's employees, clients, and prospective clients that Locke's clients include an entity in Switzerland which she sometimes described as a Swiss money manager and sometimes as a Swiss private bank. Compl., ¶ 18. From approximately mid-2003 until late 2006, Locke had no other clients except for the purported Swiss client. Compl., ¶ 19. During a routine Commission examination of Locke in late May 2008, Locke provided information to the Commission staff indicating that approximately $1.2 billion of its more than $1.3 billion in reported assets under management was comprised of money in certain accounts controlled by the Swiss client. Compl., ¶ 20. In connection with the 2008 examination, Jenkins also represented to the Commission staff that she had recently been set up an email account so that she could send the Swiss client her trade recommendations and the client could send her data on trade execution; however, records obtained during the course of the Commission staff's investigation revealed that the account was a sham and was only ever accessed by Jenkins. Compl., ¶ 21. Moreover, in connection with the 2008 examination, Jenkins produced documents to the Commission staff that she represented were copies of custodial statements for the Swiss client's accounts at JP Morgan Chase ("Chase"); however, the custodial statements were not genuine, Chase had no record of any accounts for the Swiss client, and, laptop computers owned by Locke and used by Jenkins contained files that were used to create the purported third-party custodial statements. Compl., ¶ 22.

The complaint also alleged that Locke and Jenkins fabricated investment performance returns, including for several years when Locke had no real clients and was not managing any

real assets and also for the years that included the purported investment returns of the fictitious Swiss client. Compl., ¶ 1. From 2005 until at least 2008, Locke and Jenkins made misrepresentations to clients and potential clients about the investment returns on Locke's various investment strategies. Compl., ¶ 26.

B. Default Judgment Against Locke

On March 15, 2010, the Clerk of Court entered a default against Locke in the Civil Action pursuant to Fed. R. Civ. P. 55(a). See Sevilla Decl., ¶ 3; Default Op., p. 1 (at Appendix, Exhibit B). On July 21, 2010, the Court granted the Commission's motion for a default judgment against Locke pursuant to Fed. R. Civ. P. 55(b)(2), and the Court indicated that it would enter a final judgment against Locke upon the resolution of the Commission's claims against co-defendant Jenkins. See Sevilla Decl., ¶ 3; Default Op., p. 10. The Court found that the Commission had established Locke's violations of Section 10(b) of the Exchange Act and Section 17(a) of the Securities Act, as well as other provisions of the federal securities laws. See Default Op., pp. 2-4. The Court further found that monetary as well as injunctive relief was warranted against Locke for its statutory violations. See Default Op., pp. 5-10.

C. Summary Judgment Against Jenkins

The Commission and Jenkins filed cross-motions for summary judgment against each other in the Civil Action, and, on June 30, 2011, the Court granted the Commission's motion and denied Jenkins' motion. See Sevilla Decl., ¶ 4; SJ Op., p. 1 (at Appendix, Exhibit C).

In denying Jenkins' motion for summary judgment, the Court concluded that most of her factual assertions were "either unsupported by competent evidence, immaterial to whether she may be found liable for the asserted securities laws violations, or both." SJ Op., p. 13-14. As to

Jenkins' remaining assertions concerning the material issue of whether the Swiss client existed, the Court found:

> It is plain that none of these assertions, even if proven, would entitle Jenkins to judgment as a matter of law. The SEC has adduced substantial damning evidence suggesting she lied about [the Swiss client] and tried desperately to cover her tracks. Even if Jenkins could prove that additional trade verification data was stolen and present that data, provide additional emails to or from the [email] account, and verify the information about the [Swiss client's] address in Zurich – and it is highly unlikely that she could do all this . . . – this would not be enough to conclusively refute the Commission's allegations and entitle her to summary judgment. This conclusion is obvious in consideration of the Commission's extensive evidence of misconduct . . . .

SJ Op., p. 16 (emphasis added).

In granting the Commission's motion for summary judgment against Jenkins, the Court characterized the question of the existence of the allegedly-fake Swiss client as the "lynchpin" of the Commission's claims and noted that "if the Commission can show there is no genuine factual dispute with respect to Jenkins's fabrication of [the Swiss client], the other elements of the violations are easily established." SJ Op., p. 17. The Court went on to conclude that:

> In short, Jenkins has produced no competent or credible evidence refuting the Commission's motion. Jenkins submitted reams of memoranda containing bald assertions and loosely-woven tales. Generally, Jenkins's 'disputed' facts fall into three categories: (1) bald assertions unsupported by competent or admissible evidence; (2) 'facts' supported only by Jenkins's own declarations, which are uncorroborated and so incredible that no reasonable jury could believe their veracity; and (3) immaterial fact disputes – fact disputes that, even when viewed in the light most favorable to Jenkins, do not preclude summary judgment in favor of the Commission.

SJ Op., p. 17.

Among the "facts" supported only by Jenkins' own declarations and testimony were her assertions that the Swiss client did exist and that Jenkins did not make any knowingly false

statements. SJ Op., p. 19. The Court concluded that Jenkins's own assertions of fact were not sufficient to defeat the Commission's summary judgment motion because:

> . . . [O]ther than her own word, Jenkins has not provided a shred of competent evidence corroborating the existence of the Swiss client. . . .
>
> Simply put, no reasonable jury could believe Jenkins's incredible account in light of the overwhelming evidence that she manufactured stories and records and in the absence of a single piece of evidence corroborating her account. A non-moving party may not defeat summary judgment by simply alleging the impossible in a self-serving declaration or affidavit.

SJ Op., p. 20.

Having found that the Commission put forth undisputed facts in support of its claims, the Court went on to conclude that the Commission had established the elements of the alleged statutory violations, including violations of the anti-fraud provisions of the Securities Act, Exchange Act, and Advisers Act. See SJ Op., pp. 23-28.

As with Locke, the Court imposed monetary as well as injunctive relief against Jenkins. See SJ Op., pp. 28-35. In particular, in granting the Commission's request for an order permanently enjoining Jenkins from future violations of various provisions of the securities laws, the Court concluded the following:

> The facts, as proffered by the Commission and not refuted by Jenkins with competent and credible evidence, suggest strongly that a permanent injunction is appropriate. Over the course of years, Jenkins fabricated a major client, inflated Locke's assets under management in advertising materials, and then lied to the Commission to evade prosecution. . . . [T]he Court easily finds that it is reasonably likely that Jenkins would continue violating the securities laws if not enjoined from doing so . . . .

SJ Op., pp. 28-29.

Similarly, in explaining its rationale for imposing a penalty against Jenkins, the Court noted that "Jenkins's conduct spanned a number of years and reflects a great effort to piece together a fraudulent scheme, cover it up, and then continue to lie about it throughout this

litigation. Such an elaborate scheme no doubt evinces Jenkins's conscious intent to defraud and supports findings of recurring and egregious behavior" sufficient to justify the imposition of a penalty equal to the amount of her pecuniary gain from the scheme. SJ Op., p. 33.

D. Remedies in the Civil Action

On June 30, 2011, the Court entered final judgments against Locke and Jenkins in the Civil Action. See Sevilla Decl., ¶¶ 5-7; Locke Final J. (at Appendix, Exhibit D); Jenkins Final J (at Appendix, Exhibit E). In addition to imposing monetary sanctions, the Court ordered that Jenkins be permanently enjoined from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 207 of the Advisers Act, and that Jenkins be permanently enjoined from aiding and abetting violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a)(6), (8), (10), (15), & (16) and 206(4)-1(a)(5) thereunder. See Jenkins Final J., ¶¶ I-VII (at Appendix, Exhibit E).

III. ARGUMENT

A. Summary Disposition is Appropriate Against Jenkins.

Ample precedent supports the proposition that summary disposition is appropriate where, as here, the pertinent facts already have been litigated in an earlier judicial proceeding. See, e.g., Jeffrey L. Gibson, Exchange Act Rel. No. 57266, 92 S.E.C. Docket 1596 (Feb. 4, 2008) (Commission finding that grant of Division's motion for summary disposition was appropriate and barring respondent from associating with broker, dealer, and investment adviser based on injunction entered against respondent because bar was in public interest), petition denied, Gibson v. SEC, 561 F.3d 548 (6th Cir. 2009); Conrad P. Seghers, Advisers Act Rel. No. 2656, 91 S.E.C. Docket 1945 (Sep. 26, 2007) (on appeal from initial decision, Commission holding summary disposition was appropriate where respondent was permanently enjoined in district court action

from violating anti-fraud provisions of federal securities and imposing permanent investment adviser bar), petition denied, Seghers v. SEC, 548 F.3d 129 (D.C. Cir. 2008); Joseph P. Galluzzi, Exchange Act Rel. No. 46405, 78 S.E.C. Docket 906 (Aug. 23, 2002) (Commission upholding grant of Division's motion for summary disposition where facts were determined in earlier criminal conviction and injunctive action), aff'g Initial Decision Rel. No. 187, 75 S.E.C. Docket 1320 (Aug. 7, 2001). See also Richard S. Kern and Charles Wilkins, Initial Decision Rel. No. 281 (Apr. 21, 2005), 85 S.E.C. Docket 799 (initial decision granting summary disposition and ordering penny stock bars in follow-on proceeding based on permanent injunction); Currency Trading International, Inc., et al., Initial Decision Rel. No. 263, 83 S.E.C. Docket 3008 (Oct. 12, 2004) (granting Division's motion for summary disposition in follow-on proceeding based on entry of injunction); Michael D. Richmond, Initial Decision Rel. No. 224, 79 S.E.C. Docket 2084 (Feb. 25, 2003) (granting summary disposition to the Division in follow-on proceeding based on permanent injunction).[2]

These proceedings against Jenkins were instituted pursuant to Section 15(b)(6)(A)(iii) of the Exchange Act and Section 203(f) of the Advisers Act (by way of reference to Section 203(e)(4) of the Advisers Act). These statutory provisions state that an individual may be barred from association with an investment adviser, broker, or dealer (as the case may be), if the person has been "permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction . . . from engaging in or continuing any conduct or practice . . . in

[2] The same result has been reached in follow-on proceedings instituted on the basis of criminal convictions. Cf. Gary M. Kornman, Exchange Act Rel. No. 59403, 95 S.E.C. Docket 601 (Feb. 13, 2009) (in follow-on proceeding based on criminal conviction of registered representative, Commission holding that ALJ decision by summary disposition was appropriate and imposing broker, dealer, and investment adviser bars), aff'g Initial Decision Rel. No. 335, 91 S.E.C. Docket 2234 (Oct. 9, 2007), petition denied, Kornman v. SEC, 592 F.3d 173 (D.C. Cir. 2010); John S. Brownson, Exchange Act Rel. No. 46161, 77 S.E.C. Docket 3097 (July 3, 2002) (Commission upholding grant of Division's motion for summary disposition where facts were determined by earlier criminal conviction), aff'g Initial Decision Rel. No. 182 (Mar. 23, 2001), petition denied, 66 Fed. Appx. 687 (9th Cir. 2003); Brad Haddy, Initial Decision Rel. No. 164, 72 S.E.C. Docket 994 (May 8, 2000) (granting Division's motion for summary disposition where facts were determined by conviction in criminal action).

connection with the purchase or sale of a security," and the bar is in the public interest. Thus, under these provisions, an injunction may furnish the sole basis for remedial action if such action is in the public interest. See Elliott v. SEC, 36 F.3d 86, 87 (11th Cir. 1994).

Based on the record, the ALJ should conclude as a matter of law that Jenkins has been enjoined within the meaning of Section 15(b)(6)(A)(iii) of the Exchange Act. Cf. Anderson and Kerns, supra (ALJ held that proof that respondent was enjoined by federal district court from violating antifraud provisions of Securities Act and Exchange Act was sufficient to subject respondent to imposition of sanctions pursuant to Section 15(b)(6)). Because, as discussed above, the provisions of the Advisers Act are nearly identical, the same rationale applies by extension to the Advisers Act.

B. Sanctions Against Jenkins are in the Public Interest.

The ALJ further should conclude as a matter of law that remedial sanctions against Jenkins are appropriate and in the public interest for the protection of investors pursuant to the factors set forth in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979). The following are relevant considerations in making the public interest determination: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. Steadman, 603 F.2d at 1140.

In applying the Steadman factors to determine whether a bar is in the public interest, the Commission previously has found a bar appropriate in circumstances such as those present in this matter. See, e.g., Gibson, supra (Commission finding that bar was in public interest in follow-on proceeding based on permanent injunction); Seghers, supra (same); Galluzzi, supra

(Commission finding imposition of bar against respondent appropriate under Steadman on basis of criminal conviction for mail and wire fraud and entry of Section 10(b) injunction); Charles Phillip Elliott, Exchange Act Rel. No. 31202, 52 S.E.C. Docket 1462 (Sep. 17, 1992) (Commission finding that violations of securities laws were sufficient to support conclusion that permanent bar was in public interest), aff'd, Elliot v. SEC, 36 F.3d 86, 87 (11th Cir. 1994) (also finding that conviction of "serious violations of the securities law . . . in itself" supported Commission conclusion that bar was in public interest); Nolan W. Wade, Initial Decision Rel. No. 207, 77 S.E.C. Docket 3022 (June 24, 2002) (ALJ citing Steadman and finding a bar in the public interest, where registered representative was enjoined from violations of the federal securities law anti-fraud provisions); Peter M. Harrington, Exchange Act Rel. No. 38518, 64 S.E.C. Docket 768 (Apr. 17, 1997) (ALJ finding bar was in public interest against registered representative who had been enjoined from anti-fraud violations in underlying injunctive action).

Here, the ALJ need not look further than the Court's summary judgment opinion in the Civil Action to conclude that sanctions against Jenkins are in the public interest. The Court's summary judgment opinion reads as an indictment, not only of Jenkins' actions but also of her character. The Court's findings, quoted extensively in this Motion (at pages 5-8, supra) encapsulate the Steadman factors, including the egregiousness of Jenkins' conduct, the repetitive nature of her violations, her high degree of scienter, and the likelihood that, unless sanctioned, she will commit future violations of the same nature. All of the foregoing, in light of prior precedent, supports the imposition of a permanent bar against Jenkins from associating with any broker, dealer, or investment adviser.

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Administrative Law Judge: (a) grant the Division's motion for summary disposition against Jenkins; (b) conclude that the allegations against Jenkins in the Order Instituting Proceedings in this matter are true; and (c) permanently bar Jenkins from association with any investment adviser, broker, or dealer.

Respectfully submitted,

DIVISION OF ENFORCEMENT

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Dated: December 7, 2011

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 7, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14458

In the Matter of

LEILA C. JENKINS,

Respondent.

DIVISION OF ENFORCEMENT'S APPENDIX IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT LEILA C. JENKINS

Respectfully submitted,

DIVISION OF ENFORCEMENT

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Dated: December 7, 2011

Appendix Table of Contents

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
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ADMINISTRATIVE PROCEEDING
File No. 3-14458

In the Matter of	
LEILA C. JENKINS,	
Respondent.	

DECLARATION OF NAOMI J. SEVILLA
IN SUPPORT OF DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION

1. I am Senior Counsel in the Division of Enforcement ("Division") of the Securities and Exchange Commission's Boston Regional Office. I was actively involved in the Division's investigation that preceded the filing of the civil action entitled Securities and Exchange Commission v. Locke Capital Management, Inc. and Leila C. Jenkins, Case No. 09-100-S (the "Civil Action"), in the United States District Court for the District of Rhode Island (the "Court"). I was among counsel of record in the Civil Action, and I am now one of the Division attorneys in the above-captioned proceedings against Leila C. Jenkins ("Jenkins") and related proceedings (A.P. File No. 3-14457) against Locke Capital Management, Inc. ("Locke"). I make this declaration based upon my personal knowledge and in support of the Division's Motion for Summary Disposition.

2. On March 9, 2009, the Commission filed the Civil Action against Locke and Jenkins. Attached hereto as **Exhibit A** is a true and accurate copy of the Complaint in the Civil Action.

3. On March 15, 2010, the Clerk of Court entered a default against Locke in the Civil Action. On July 21, 2010, the Court granted the Commission's motion for a default judgment against Locke and indicated that it would enter a final judgment against Locke upon the resolution of the Commission's claims against co-defendant Jenkins. Attached hereto as **Exhibit B** is a true and accurate copy of the judge's written opinion in the Civil Action concerning the default judgment against Locke.

4. The Commission and Jenkins filed cross-motions for summary judgment against each other in the Civil Action, and, on June 30, 2011, the Court granted the Commission's motion and denied Jenkins' motion. Attached hereto as **Exhibit C** is a true and accurate copy of the judge's written opinion in the Civil Action concerning summary judgment against Jenkins.

5. On June 30, 2011, the Court entered final judgments against Locke and Jenkins in the Civil Action.

6. Attached hereto as **Exhibit D** is a true and accurate copy of the Final Judgment entered against Locke in the Civil Action.

7. Attached hereto as **Exhibit E** is a true and accurate copy of the Final Judgment entered against Jenkins in the Civil Action.

Naomi J. Sevilla

Dated: December 7, 2011

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LOCKE CAPITAL MANAGEMENT, INC. and LEILA C. JENKINS, Defendants.	Case No. CA 09 100 JURY TRIAL DEMANDED

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission ("the Commission") alleges the following against defendants Locke Capital Management, Inc. ("Locke") and Leila C. Jenkins ("Jenkins"):

PRELIMINARY STATEMENT

1. This enforcement action concerns a registered investment adviser (Locke), with offices in New York and in Newport, Rhode Island, and its President, Chief Executive Officer, and sole owner (Jenkins). From at least 2003 until early 2009, Locke and Jenkins lied repeatedly in filings with the Commission, marketing materials, and communications with clients and prospective clients in order to mislead investors into placing their assets in Locke's care. First, Locke and Jenkins invented several large advisory client accounts, supposedly based in Switzerland, in order to inflate Locke's reported assets under management. Since late 2006, Locke and Jenkins have told clients, potential clients, and the Commission that Locke has more

than $1 billion in assets under management (and sometimes as much as $1.6 billion), whereas the assets of Locke's real clients comprised only a small fraction of that figure (less than $165 million). Second, Locke and Jenkins fabricated investment performance returns, including returns for several years when Locke had no real clients and was not managing any real assets. Third, Locke and Jenkins made false statements about other aspects of Locke's business. Lastly, to perpetuate the scheme and conceal her deceptions, Jenkins lied repeatedly during a routine examination and subsequent enforcement investigation by the Commission.

2. Through the activities alleged in this Complaint, Locke and Jenkins engaged in: (i) fraud in the offer or sale of securities, in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"); (ii) fraudulent or deceptive conduct in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; (iii) fraudulent or deceptive conduct with respect to investment advisory clients, in violation of Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"); and (iv) the making of untrue statements of material fact in reports filed with the Commission, in violation of Section 207 of the Advisers Act. In addition, Locke engaged in: (i) fraudulent or deceptive advertising for investment advisory services, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder; and (ii) violations of numerous reporting, record-keeping and other provisions of Sections 204 and 204A of the Advisers Act and Rules 204-2(a) and 204A-1 thereunder, and Jenkins aided and abetted Locke's violations of those provisions.

3. Accordingly, the Commission seeks: (i) entry of a permanent injunction prohibiting Locke and Jenkins from further violations of the relevant provisions of the federal

securities laws; (ii) disgorgement of Locke and Jenkins' ill-gotten gains, plus pre-judgment interest; and (iii) the imposition of a civil monetary penalty due to the egregious nature of Locke and Jenkins' violations.

JURISDICTION

4. The Commission seeks a permanent injunction and disgorgement pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)], Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)], and Section 209(d) of the Advisers Act [15 U.S.C. §80b-9(d)]. The Commission seeks the imposition of a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)].

5. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d), 77v(a)], Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), 78aa], and Sections 209(3) and 214 of the Advisers Act [15 U.S.C. §§80b-9(d), 80b-14]. Venue is proper in this District because, at all relevant times, Locke maintained an office here and Jenkins maintained a residence here.

6. In connection with the conduct described in this Complaint, Locke and Jenkins directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

7. The conduct of Locke and Jenkins involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

DEFENDANTS

8. Locke Capital Management, Inc. ("Locke") is a Rhode Island corporation with an office in Newport, Rhode Island. At all relevant times, Locke also maintained an office in New York, New York. Locke has been registered with the Commission as an investment adviser since March 1997. Locke markets itself as a global equity management boutique, and its clients have included institutions, high net worth individuals, two separately managed accounts for wrap fee clients, and a hedge fund with approximately $10 million in assets.

9. Leila C. Jenkins, age 54, maintains residences in Newport, Rhode Island, and in Palm Beach, Florida. She is the founder and sole owner of Locke, and currently serves as its President, Chief Executive Officer, and Chief Investment Officer. On February 3, 2009, Jenkins submitted a sworn declaration to the Commission in which she invoked her Fifth Amendment right against self-incrimination in connection with the investigation that preceded the filing of this action.

FACTS COMMON TO ALL COUNTS

The Importance of Assets Under Management and Investment Returns in the Selection of an Investment Adviser

10. Two factors that investors often consider when choosing an investment adviser are the adviser's assets under management and the investment returns that the adviser has achieved from its various investment strategies. Several commercial services compile data about investment advisers, including assets under management and investment returns, to assist investors in evaluating investment advisers. Many of Locke's clients reviewed information about

assets under management and investment returns in connection with their choice of an investment adviser.

Misrepresentations about Locke's Assets Under Management

Locke's Reported Assets Under Management

11. As an investment adviser registered with the Commission, Locke is required by Section 203 of the Advisers Act to execute and keep current an application for investment adviser registration on Form ADV. [*See* 17 C.F.R. §279.1] Part I of a Form ADV, which is filed with the Commission and made available to the public, requires the disclosure of certain material information about the adviser, including the amount of assets under its management.

12. Between February 2003 and September 2008, Locke filed Forms ADV containing the following representations about its assets under management:

Date of Form ADV	Assets under Management
February 1, 2003	$82,000,000
January 16, 2004	$88,000,000
February 16, 2005	$62,118,262
September 8, 2005	$74,838,002
January 20, 2006	$89,317,924
April 2, 2007	$1,232,689,661
April 2, 2008	$1,306,692,872
September 26, 2008	$1,327,635,399

Jenkins, as Locke's President, signed each Form ADV under the pains and penalties of perjury.

13. Locke and Jenkins maintained and periodically updated a "due diligence questionnaire" that was distributed to clients and prospective clients. Two versions of the questionnaire contained the following representations about Locke's assets under management:

Date of Questionnaire	Assets under Management
December 1, 2006	$1,200,000,000
November 30, 2008	$1,200,000,000

14. Locke and Jenkins maintained and periodically updated a firm brochure that was distributed to clients and prospective clients. Various versions of the firm brochure contained the following representations about Locke's assets under management:

Year	Assets under Management
2003	$400,000,000
2004	$649,000,000
2005	$893,000,000
2006	$1,231,000,000
2007	$1,312,000,000
2008 (as of March 31)	$1,377,000,000
2008 (as of June 30)	$1,386,000,000
2008 (as of Sept. 30)	$1,241,000,000
2008 (as of Nov. 30)	$1,217,000,000

15. Locke and Jenkins supplied data to several commercial services which, as set forth above, compile information for clients and consultants to review when evaluating

investment advisers. Many of Locke's clients and potential clients reviewed this information when deciding whether to select or retain Locke as an advisor.

a. In late 2006, Locke and Jenkins told one service that Locke had more than $1.1 billion in assets under management as of September 30, 2006.

b. In 2008, Locke and Jenkins provided another service with the following information about Locke's assets under management:

Year	Assets under Management
2003	$400,500,000
2004	$602,100,000
2005	$893,000,000
2006	$1,231,000,000
2007	$1,312,000,000
2008	$1,377,000,000

16. Jenkins sent emails to clients and prospective clients containing information about Locke. Several of the emails contained the following representations about Locke's assets under management:

Date of Email	Assets under Management
November 27, 2007	$1,230,671,049
January 13, 2008	$1,312,000,000
January 28, 2008	$1,500,000,000
March 27, 2008	$1,361,000,000
May 23, 2008	$1,306,692,872

17. Jenkins made representations about Locke's assets under management during meetings with prospective clients. Examples include:

a. On or about December 13, 2004, Jenkins told a prospective client that Locke had $581 million in assets under management for three clients, including a Swiss bank.

b. On or about July 31, 2006, Jenkins told a prospective client that Locke had more than $1 billion in assets under management as of June 30, 2006.

c. On or about November 16, 2007, Jenkins told a prospective client that Locke had $1.4 billion or $1.6 billion in assets under management. (Jenkins used both figures during the meeting.)

d. On or about January 28, 2008, Jenkins told a prospective client that Locke had more than $1.5 billion in assets under management as of September 30, 2007.

e. On or about August 19, 2008, Jenkins told a prospective client that Locke had $1.4 billion in assets under management.

f. As recently as January 29, 2009, Jenkins told a client that Locke had $1.2 billion in assets under management.

Locke's Fictitious Swiss Client

18. Since at least 2000, Jenkins has told some of Locke's employees, clients, and prospective clients that Locke's clients include an entity in Switzerland which she sometimes described as a Swiss money manager and sometimes as a Swiss private bank. Jenkins often referred to the purported Swiss client's accounts as "SPB accounts," which she told at least one Locke employee meant "Swiss Private Bank."

19. From approximately mid-2003 until late 2006, Locke had no clients except for the purported Swiss client, but beginning in late 2006, Locke started to attract new clients, including two foreign banks who in 2007 invested in a hedge fund formed by Locke. The period when Locke began attracting new clients coincided with the ten-fold increase in Locke's assets under management as reported in its Form ADV -- from less than $100 million (Form ADV dated January 20, 2006) to more than $1.2 *billion* (Form ADV dated April 2, 2007).

20. The Commission began a routine examination of Locke in late May 2008. During that examination, which lasted for several months, Locke provided information indicating that approximately $1.2 billion of its more than $1.3 billion in reported assets under management was comprised of money in certain accounts controlled by a Swiss client. Jenkins explained that the Swiss client had retained Locke to provide investment advice, that she regularly telephoned the client with lists of recommended transactions, that the client told her by phone the prices and quantities at which her recommendations had been executed, and that the client later sent her information reflecting the execution of the completed transactions.

21. In connection with the 2008 examination, Jenkins stated that an email account at Hotmail had recently been set up so that she could send the Swiss client her trade recommendations and the client could send her data on trade execution. However, records obtained during the course of the investigation indicate that when Jenkins received a list of proposed trades for a particular day from Locke's head trader, she frequently did not forward the list to the Hotmail account for as long as three or four weeks after the putative trade date, and she did not forward the proposed trades for certain days at all. Also, Jenkins received trade execution data from the Hotmail account on only a few occasions, and on at least one of them,

the log-in to the account took place from New York, where Locke maintained an office, and not from Switzerland, where the client was supposedly located. (None of the log-ins for which information is available took place from Switzerland.) Further, Jenkins sometimes provided Locke's employees with purported trade execution data for the Swiss client for dates when she received no emails from the Hotmail account.

22. In connection with the 2008 examination, Jenkins produced documents which she represented were copies of custodial statements for the Swiss client's accounts at JP Morgan Chase ("Chase"). Jenkins claimed that she had obtained the statements from the Swiss client by mail. However, the custodial statements are not genuine, and Chase has no record of any accounts for the Swiss client, for Locke itself, or for any Locke-related entity other than some of Locke's genuine clients. In addition, laptop computers used by Jenkins contain files which were used to create the purported custodial statements, including images of Chase's logo and drafts of the custodial statements with names like "chase in word," "chase paper" and "try."

23. During the course of the Commission's investigation, Jenkins admitted that she never visited the Swiss client, never met anyone from the client, and kept no phone records reflecting any calls with the client (supposedly because she used prepaid phone cards). In addition, nine former employees of Locke, including the former head trader, stated that they never communicated with any representatives of the Swiss client and never saw any trade tickets, confirmations, or brokerage account statements reflecting any trading for the client. (No employee reported having had any communications with, or having seen any documents reflecting the existence of, the Swiss client.) Also, records available to Swiss authorities contain no trace of the Swiss client (which Jenkins identified as "AM AG") or the persons named by

Jenkins as her contacts at the Swiss client, no entity named "AM AG" can be found at the address provided by Jenkins, and repeated calls to the phone number provided by Jenkins have gone unanswered.

24. In short, the Swiss client is pure fiction invented by Jenkins. As a result, the representations set forth above about Locke's assets under management were materially false and misleading. The figures for 2004 and 2005 were completely false, because Locke had no real clients in those years. The figures for 2006, 2007 and 2008 were materially overstated, because the assets of Locke's real clients never exceeded $165 million in those years, whereas Locke and Jenkins consistently reported figures in excess of $1 billion and, on some occasions, as high as $1.6 billion.

25. In mid-January 2009, after the Commission had commenced the investigation that preceded the filing of this action, Jenkins produced a document purporting to be a copy of a letter dated January 6, 2009 from the Swiss client terminating the advisory agreement with Locke as of January 1, 2009. Nevertheless, Locke and Jenkins have continued to claim that Locke has more than $1 billion in assets under management.

a. On or about January 29, 2009, Jenkins told a client that Locke had $1.2 billion in assets under management.

b. On or about February 11, 2009, Locke filed a Form ADV stating that Locke has more than $1.3 billion in assets under management.

Misrepresentations about Locke's Investment Returns

26. From 2005 until at least 2008, Locke and Jenkins made misrepresentations to clients and potential clients about the investment returns on Locke's various investment strategies. Examples include:

a. Throughout this period, Locke and Jenkins prepared and distributed to clients and prospective clients certain marketing brochures that presented Locke's purported investment returns dating back to 1990. In reality, Locke did not even exist in 1990.

b. Locke's due diligence questionnaire dated December 1, 2006 included figures purporting to show that the firm had an 11-year track record (from 1995 through 2006) for investment performance. In reality, Locke had no clients in 2004 and 2005, and thus Locke could not have had any investment performance in those years.

c. On or about November 9, 2005 and January 24, 2006, Locke and Jenkins caused a brochure to be sent to prospective investors in Locke's hedge fund that listed the hedge fund's investment performance results dating back to January 2004. Similarly, on September 29, 2008, Jenkins told a prospective client that the hedge fund had been in operation since early 2004. In reality, the hedge fund only came into existence in January 2006, and it was not funded by any investors until 2007.

27. From 2005 until at least 2008, Locke and Jenkins told clients and potential clients that Locke's investment performance figures complied with Global Investment Performance Standards ("GIPS"), a set of standardized principles that provide investment firms with guidance on how to calculate and report their investment returns in a manner that enables the investing

public to compare such results. In reality, Locke's investment performance figures were not GIPS-compliant.

Other Misrepresentations about Locke's Business

28. Locke and Jenkins frequently misrepresented the number, identity, role, and employment status of its employees, including without limitation, in its Form ADV, in its marketing materials, and at meetings with clients and prospective clients. Examples include:

a. On or about July 29, 2007, Jenkins told a prospective client that a certain individual was one of Locke's current clients and could provide a reference for Locke. On or about August 22, 2007, Jenkins made a similar representation to another prospective client. In reality, the person named was Locke's Chief Operating Officer.

b. On or about November 27, 2007, Jenkins sent a brochure to a prospective client stating that Locke had employed a certain portfolio manager since 1999. In reality, the individual did not work for Locke in 2003 and 2004, and the individual's employment with Locke had been terminated by October 31, 2007.

c. Even though the portfolio manager's employment had been terminated by October 31, 2007, Jenkins told at least one prospective client in January 2008 that no key personnel had left Locke. She also told another prospective client in February 2008 that the portfolio manager was on a medical leave of absence. In reality, the portfolio manager had no medical condition and was not on a leave of absence.

d. On or about January 29, 2009, Jenkins told a client that Locke had eight employees. Similarly, the Form ADV which Locke filed on February 11, 2009 stated that Locke

had between six and ten employees. In reality, Locke employed only Jenkins and one other individual when the statements were made.

e. On or about January 15, 2009, Locke and Jenkins provided a firm brochure to a consultant and a prospective client which stated that Locke employed a certain individual as an analyst and another individual as a trader. In reality, the trader had stopped working for Locke in December 2008, and the analyst had only volunteered at Locke between January and April 2008.

Jenkins' Misrepresentations to Commission Employees

29. During the 2008 examination and the subsequent investigation, Jenkins made numerous misrepresentations to Commission employees in order to perpetuate the scheme described above and prevent its discovery. Examples include:

a. On several occasions (including but not limited to June 15, July 1, September 26, November 25, and December 30, 2008), Jenkins stated that the Swiss client and its accounts actually existed. As set forth above, the Swiss client does not actually exist.

b. During the examination, Jenkins produced documents that she represented were custodial statements for the Swiss client's accounts at Chase. In reality, as set forth above, the statements are not genuine, and Jenkins prepared them on a laptop computer.

c. During the examination, Jenkins produced a document purporting to be an investment advisory agreement with AM AG dated January 2, 1997. In reality, AM AG does not exist, and Locke had no advisory clients in January 1997.

d. On September 26, 2008, Jenkins stated by email that an audit of Locke's performance figures was nearly completed. In a letter dated November 25, 2008, Jenkins stated that the audit was still ongoing. In reality, the audit had not even begun when Jenkins made those statements.

d. In her letter dated November 25, 2008, Jenkins also stated that Locke had never claimed that its performance figures were GIPS compliant in any advertising, marketing, or sales materials distributed to any client, consultant, or prospective client. In reality, as set forth above, Locke routinely claimed -- in advertising, marketing, and sales materials distributed to both consultants and prospective clients -- that its performance figures were GIPS-compliant.

FIRST CLAIM FOR RELIEF
(Violation of Section 17(a) of the Securities Act)

30. The Commission repeats and incorporates by reference the allegations in paragraphs 1-29 above.

31. Locke and Jenkins, directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions 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) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

32. As a result, Locke and Jenkins have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. §77q(a)].

SECOND CLAIM FOR RELIEF
(Violation of Section 10(b) of the Exchange Act and Rule 10b-5)

33. The Commission repeats and incorporates by reference the allegations in paragraphs 1-32 above.

34. Locke and Jenkins, directly or indirectly, acting intentionally, knowingly or recklessly, by the use of means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have made or are making untrue statements of material fact or have omitted or are omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) have engaged or are engaging in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

35. As a result, Locke and Jenkins have violated and, unless enjoined, will continue to violate 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].

THIRD CLAIM FOR RELIEF
(Violation of Sections 206(1) and (2) of the Advisers Act)

36. The Commission repeats and incorporates by reference the allegations in paragraphs 1-35 above.

37. Locke was an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)]. Likewise, Jenkins was an "investment adviser" due to her ownership and control of Locke.

38. Locke and Jenkins, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly or recklessly: (a) have employed or are employing devices, schemes, or artifices to defraud; or (b) have engaged or are engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client.

39. As a result, Locke and Jenkins have violated and, unless enjoined, will continue to violate Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§80b-6(1), (2)].

FOURTH CLAIM FOR RELIEF
(Violation of Section 207 of the Advisers Act)

40. The Commission repeats and incorporates by reference the allegations in paragraphs 1-39 above.

41. Section 207 of the Advisers Act provides that it is unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203, or to omit to state in any such application or report any material fact which is required to be stated therein.

42. As set forth above, Locke filed Forms ADV with the Commission (signed by Jenkins as its President) which made untrue statements of material fact, or willfully omitted to state a material fact which was required to be stated.

43. As a result, Locke and Jenkins have violated and, unless enjoined, will continue to violate Section 207 of the Advisers Act [15 U.S.C. §80b-7].

FIFTH CLAIM FOR RELIEF
(Violation of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5))

44. The Commission repeats and incorporates by reference the allegations in paragraphs 1-43 above.

45. Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) promulgated thereunder provide that it shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business for any registered investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading.

46. As set forth above, Locke published, circulated, or distributed advertisements -- including without limitation numerous versions of its "due diligence questionnaire" and firm brochure – that contained untrue statements of material fact or were otherwise false or misleading.

47. As a result, Locke violated and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-1(a)(5) thereunder [17 C.F.R. §275.206(4)-1(a)(5)]. In addition, Jenkins aided and abetted Locke's violation of those provisions.

SIXTH CLAIM FOR RELIEF
(Violation of Sections 204 and 204A of the Advisers Act and Rules 204-2 and 204A-1)

48. The Commission repeats and incorporates by reference the allegations in paragraphs 1-47 above.

49. Section 204 of the Advisers Act and certain rules promulgated thereunder require a registered investment adviser to make and keep true, accurate and current books and records.

50. Rule 204-2(a)(6) promulgated under the Advisers Act requires an investment adviser to make and keep accurate trial balances and financial statements. Locke's trial balances for 2007 and 2008 (produced in the course of the 2008 examination) reflect unequal credits and debits. In addition, Locke's cash flow statements for 2007 and 2008 (also produced in the course of the 2008 examination) do not accurately account for all the fees which Locke received from clients.

51. Rule 204-2(a)(8) promulgated under the Advisers Act requires an investment adviser to keep a list or other record of all accounts for which the investment adviser has discretionary authority with respect to any funds or transactions. The client list which Locke provided to the Commission failed to include eight of Locke's current clients and included eight other clients whose agreements with Locke had been terminated.

52. Rule 204-2(a)(10) promulgated under the Advisers Act requires an investment adviser to maintain originals or copies of all written agreements between the adviser and any client. Despite repeated requests, Locke was unable to provide the Commission with copies of such written agreements for several clients.

53. Rule 206(4)-3 promulgated under the Advisers Act requires an investment adviser that pays a cash fee for solicitation activities to receive from its solicited clients an acknowledgment that the client has received the adviser's written disclosure statement on Form ADV as well as the solicitor's written disclosure statement. Rule 204-2(a)(15) requires an investment adviser to maintain copies of the client acknowledgments and solicitor disclosure documents. Locke has entered into a written solicitation agreement but, during the 2008 examination, Locke was unable to produce copies of the client acknowledgments or any other evidence that the clients had been provided with the solicitor's written disclosure statement.

54. Rule 204-2(a)(16) promulgated under the Advisers Act requires an investment adviser to keep all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than persons connected with such investment adviser); provided, however, that with respect to the performance of managed accounts, the retention of all account statements, if they reflect debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy this requirement. During the 2008 examination, Locke was unable to provide support for the reported performance of all its client accounts.

55. Section 204A of the Advisers Act and Rule 204A-1 thereunder require an investment adviser to adopt a Code of Ethics with certain minimum standards. During the 2008 examination, Locke was unable to produce a copy of its Code of Ethics.

56. As a result, Locke violated and, unless enjoined, will continue to violate Sections 204 and 204A of the Advisers Act [15 U.S.C. §§80b-4, 80b-4A] and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16), and 204A-1 thereunder [17 C.F.R. §§275.204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16), 204A-1]. In addition, Jenkins aided and abetted Locke's violation of those provisions.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining Locke, Jenkins and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:

1. Section 17(a) of the Securities Act [15 U.S.C. §77q(a)];

2. 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];

3. Sections 206(1), 206(2) and 206(4) of the Advisers Act [15 U.S.C. §§80b-6(1), 80b-6(2), 80b-6(4)] and Rule 206(4)-1(a)(5) thereunder [17 C.F.R. §275.206(4)-1(a)(5)];

4. Section 207 of the Advisers Act [15 U.S.C. §80b-7];

5. Section 204 of the Advisers Act [15 U.S.C. §80b-4] and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), and 204-2(a)(16)

thereunder [17 C.F.R. §§275.204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16)]; and

6. Section 204A of the Advisers Act [15 U.S.C. §80b-4A] and Rule 204A-1 thereunder [17 C.F.R. §275.204A-1].

B. Require Locke and Jenkins to disgorge their ill-gotten gains, plus pre-judgment interest;

C. Order Locke and Jenkins to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)];

D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

E. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Dated: March 9, 2009

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	)	
vs.	)	C.A. No. 09-100 S
LOCKE CAPITAL MANAGEMENT, INC. and LEILA C. JENKINS, Defendants.	)	

OPINION AND ORDER

WILLIAM E. SMITH, United States District Judge.

Defendant Locke Capital Management, Inc. ("Locke") defaulted in this matter on March 15, 2010. The United States Securities and Exchange Commission (the "Commission" or the "SEC") now seeks the entry of a default judgment against Locke imposing injunctive relief and damages. The Commission's Motion is granted, and the Court will enter judgment against Locke according to the terms set forth below.

I. Standard for default and allegations

"When a court enters a default judgment against a defendant, all allegations in the complaint must be taken as true." McKinnon v. Kwong Wah Rest., 83 F.3d 498, 506 n.5 (1st Cir. 1996) (quotation marks and citation omitted). In this case, the Commission alleges that Locke, an investment advisory

firm, committed multiple violations of federal securities laws in furtherance of a fraudulent scheme. Specifically, Locke fabricated a massive Swiss banking client to drum up business among potential investors. This had the effect of inflating Locke's apparent assets under management far beyond reality. (See generally Compl. ¶¶ 11-25, C.A. No. 09-100 S, Doc. No. 1, Mar. 9, 2009). In marketing materials, Locke touted how much money the fictitious client had placed in Locke's care. Locke also falsified numerous records and SEC filings to document the sham customer. Then, when asked to back up its claims about the phony bank, Locke lied to investigators. (See id. ¶¶ 26-29.)

II. Conclusions of law as to Locke's liability

After default, the Court may grant a judgment in the plaintiff's favor on all claims supported by "well-pleaded allegations in [the] . . . complaint." Eisler v. Stritzler, 535 F.2d 148, 153 (1st Cir. 1976).

The Commission requests a finding that Locke violated numerous provisions of the Investment Advisers Act of 1940 (the "Advisers Act"), as well as the anti-fraud provisions of the Securities Exchange Act of 1934 (the "Exchange Act") and the Securities Act of 1933 (the "Securities Act"). The Court finds that the well-pleaded allegations in the Complaint easily establish the alleged breaches of the anti-fraud, bookkeeping,

reporting, and advertising regulation provisions of the Advisers Act, and of rules promulgated thereunder. See 15 U.S.C. §§ 80b-3, 80b-4, 80b-4A, 80b-6, 80b-7 (2010); 17 C.F.R. §§ 275.204-2(a), 275.204A-1, 275.206(4)1-3 (2010).

At first blush, the Exchange Act claims appear to be a closer call. Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, only prohibit fraud "in connection with" the purchase or sale of securities. See 15 U.S.C. § 78j(b), § 77q(a); 17 C.F.R. § 240.10b-5. This means that the fraud must "touch" or "coincide with" a securities transaction. See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 85 (2006); Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co., 404 U.S. 6, 12-13 (1971). The bulk of Locke's alleged lies related to hawking investment advice, not securities or trades; thus, unlike in cases involving issuers or broker-dealers, here there is an extra step between the fraud and the trading.[1]

[1] In fact, in the cases cited by the Commission, as well as other cases involving Exchange Act violations by investment advisors and financial consultants, the fraud related to either specific trading practices or specific securities. See S.E.C. v. K.W. Brown & Co., 555 F. Supp. 2d 1275, 1304-06 (S.D. Fla. 2007) (finding a § 10(b) violation where investment advisers stated they would "not utilize client[s'] funds" to trade on behalf of themselves, but did in fact use client funds to "place[] numerous buy and sell orders for securities" for their own benefit); S.E.C. v. Rana Research, Inc., 8 F.3d 1358, 1362

Nevertheless, the Complaint here also reveals a sufficient link to purported and intended securities trades to satisfy the "in connection with" requirement. As part of the charade, Locke allegedly falsified "trade execution data." (Compl. ¶ 21.) Although those "trades" were of course not real, the alleged purpose of the scheme was attracting actual money to be invested by Locke in securities. (See id. ¶ 19.) Together, these allegations demonstrate that the fraud "touched" upon securities transactions. See Bankers Life, 404 U.S. at 12-13. The fact that the "in connection with" requirement "should be construed flexibly" reinforces this conclusion. S.E.C. v. Zandford, 535 U.S. 813, 813-14 (2002).

Accordingly, the Commission has also demonstrated violations of the anti-fraud provisions of the Exchange Act, as well as § 17(b) of the Securities Act.[2]

(9th Cir. 1993) (finding § 10(b) liability based on fraud about a specific transaction); S.E.C. v. Pirate Investor LLC, 580 F.3d 233, 237-38 (4th Cir. 2009) (finding a § 10(b) violation based on fraud about a particular stock).

[2] Section 17(b) only applies to fraud "in the offer or sale of any securities." 15 U.S.C. § 77q(a). However, courts treat this language even more flexibly than the terms of § 10(b). See Pinter v. Dahl, 486 U.S. 622, 643 (1988) (explaining that the terms "offer" and "sell" are "expansive enough to encompass the entire selling process"). The Commission has thus carried its burden on this claim as well.

III. Remedy

A. Damages

In assessing damages pursuant to a default, if the claim is not for a "sum certain or a sum that can be made certain by computation," Rule 55(b) provides that a court can "conduct hearings" to "determine the amount of damages" payable pursuant to a default judgment. Fed. R. Civ. P. 55(b)(2). Even in cases not involving a "sum certain," the First Circuit allows district courts discretion to forego damages hearings in some circumstances. See KPS & Assocs., Inc. v. Designs By FMC, Inc., 318 F.3d 1, 21 (1st Cir. 2003) (observing that hearings may not be necessary when a court is "intimately familiar" with the facts and may calculate damages from "documents of record," or when "inundated with affidavits, evidence, and oral presentations by opposing counsel") (quotation marks and citation omitted). In this case, the Commission's proposed judgment was unopposed, but the Court did hold a hearing to question the Commission about the appropriateness of the requested damages. The Commission's presentation, together with the evidence submitted as part of its Motion, provide the Court with sufficient information to assess a penalty.

The Court has discretion to order disgorgement of fees earned in connection with securities fraud. See S.E.C. v. Happ,

392 F.3d 12 (1st Cir. 2004). "The amount of disgorgement need only be a reasonable approximation of profits causally connected to the violation." Id. at 31 (internal quotation marks and citation omitted). The Commission seeks disgorgement of $1,781,520 in fees that it claims Locke collected as a result of the hoax, plus prejudgment interest. In support of the request, it provides an affidavit from Frank C. Huntington, senior counsel at the Commission, explaining that he has reviewed Locke's books and calculated the company's profits since it perpetrated the fraud. (See Declaration of Frank C. Huntington, Apr. 6, 2010 ("Huntington Decl.") ¶ 4.) The Commission also submits a chart tabulating prejudgment interest at the tax underpayment rate, which amounts to $110,956. (See id. ¶ 5 & Ex. A.) These materials are adequate to demonstrate that Locke should pay $1,892,476 as a "reasonable approximation" of what it owes in disgorgement.

The Court also has discretion to impose civil penalties under each of the securities laws Locke violated. Infractions that involve "fraud, deceit, [or] manipulation" trigger "second tier" sanctions. See, e.g., Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e). For each such violation, corporations face penalties of no more than the greater of $325,000 or "the gross amount of pecuniary gain." See id.; 17 C.F.R. Pt. 201,

Subpt. E, Tbl. III (providing tax-adjusted penalties). Schemes that also "created a significant risk of substantial losses to other persons" lift offenders to the "third tier" for fines. 15 U.S.C. § 80b-9(e). This raises the default assessment to $650,000, but still caps the maximum at the amount of disgorgement if that is greater. See 15 U.S.C. § 80b-9(e); 17 C.F.R. Pt. 201, Subpt. E, Tbl. III.

For either a second- or third-tier violation, Locke's amount of disgorgement would exceed the default recommended penalty. Therefore, it is not necessary to decide whether Locke's scheme exposed others to a "significant risk of substantial losses" to ascertain the maximum fine. 15 U.S.C. § 80b-9(e). Since the Complaint adequately sets forth six counts for relief, each detailing a separate violation (and in some cases, multiple violations each), at a minimum Locke's exposure exceeds $10 million.

Whether Locke created a substantial risk of loss to others, however, is still one of the factors to consider in setting a fine. See S.E.C. v. Aragon Capital Mgmt., LLC, 672 F. Supp. 2d 421, 447 (S.D.N.Y. 2009). Other factors include the egregiousness of the defendant's conduct and the degree of scienter the conduct suggested. See id. In this matter, Locke not only lied to investors about how much business it was

getting, but conjured a phantom client out of forged records. Worse, it then misled investigators to cover its tracks. In light of those facts, the absence of allegations showing Locke actually endangered clients' investments (for instance, by giving faulty trading tips, or inflating the value of a security based on false information) carries little mitigating effect. Accordingly, a severe penalty is in order, although not the maximum amount.

In most decisions dealing with circumstances like these, in which the defendant committed multiple violations warranting second- or third-tier penalties, courts do not exact the maximum fee. Instead, they select an intermediate punishment sufficient to fulfill the remedial purposes of securities laws. See Aragon, 672 F. Supp. 2d at 449 ("The Commission seeks . . . three times the illegal profits that [the defendants] obtained. In my judgment, a civil penalty equal to two times the illegal profits . . . is more than sufficient to accomplish the statute's purpose."); S.E.C. v. Colonial Inv. Mgmt. LLC, 659 F. Supp. 2d 467, 503 (S.D.N.Y. 2009) (finding that the defendant "should be subject to a severe penalty, but not the maximum one," and thus imposing penalties "in the amount of $25,000 per violation" out of a maximum of $60,000, "totaling $450,000"); S.E.C. v. Abellan, 674 F. Supp. 2d 1213, 1222 (W.D. Wash. 2009)

(imposing a $480,000 civil penalty and disgorgement of $15,403,703); S.E.C. v. Aimsi Techs., Inc., 650 F. Supp. 2d 296, 308 (S.D.N.Y. 2009) ("Since [t]he exact number of violations committed by the Defendants is nearly impossible to determine . . . the Court imposes . . . third-tier civil penalt[ies] against [the defendants] equal to [their] pecuniary gain.") (internal quotation marks and citations omitted).

The Court here adopts the same approach. It therefore finds that Locke should pay $5,677,428 in civil damages, an amount equal to three times the disgorgement it owes.

B. Injunctive relief

Each of the laws that Locke flouted authorizes permanent injunctions in cases where there is a "reasonable likelihood of recidivism." S.E.C. v. Sargent, 329 F.3d 34, 39 (1st Cir. 2003). As the Commission points out, Locke lied to clients for years, and then to the Commission itself when confronted with questions about its assets under management. These facts (which, again, must be taken as true for purposes of the Commission's motion) convince the Court that there is a reasonable likelihood Locke could attempt to evade securities laws and regulations in the future if it sought to continue doing business. The Court therefore grants the Commission's

request for an order enjoining Locke from committing future violations.

IV. Conclusion

For the reasons set forth above, the Court GRANTS the Commission's motion for a default judgment. Locke will therefore be ordered to pay $1,892,476 in disgorgement and $5,677,428 in civil penalties, for a total of $7,569,904, and enjoined from future securities law violations, by a separate Final Judgment. Judgment will enter at the conclusion of this case, once the Commission's claims against non-defaulting Defendant Jenkins have been resolved.[3]

IT IS SO ORDERED.

/s/ William E. Smith
William E. Smith
United States District Judge
Date: July 21, 2010

[3] Cross-motions for summary judgment by the Commission and Jenkins are currently pending before the Court.

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LOCKE CAPITAL MANAGEMENT, INC. and LEILA C. JENKINS, Defendants.	)	C.A. No. 09-100 S

OPINION AND ORDER

WILLIAM E. SMITH, United States District Judge.

Before the Court are cross-motions for summary judgment by Plaintiff Securities and Exchange Commission ("Commission" or "SEC") and Defendant Leila Jenkins. In this peculiar case, the Commission alleges that Jenkins concocted a Swiss client, created the appearance that the client had entrusted over one billion dollars to her company, and violated various securities laws. For the reasons explained below, the Court denies Jenkins's motion for summary judgment and grants the Commission's motion for summary judgment.

I. Background

A. Claims and Procedural Posture

The Commission alleges that Jenkins violated federal securities laws by fabricating a massive Swiss banking client for her company, Locke Capital Management, Inc. ("Locke"), to

drum up business. Locke is an investment advisory firm of which Jenkins is the sole owner and CEO. The Commission asserts that Locke touted how much money the fictitious client had placed in its care in marketing materials. Locke also allegedly falsified numerous records and SEC filings to document the sham customer. Then, when asked to back up her claims about the phony client, Jenkins allegedly lied to investigators.

The Commission alleges that, in the course of taking these actions, Jenkins (i) engaged in a fraudulent scheme in violation of section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5; (ii) engaged in fraud in violation of section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a); (iii) committed fraud in violation of section 206 of the Investment Advisers Act of 1940 (the "Advisers Act"), 15 U.S.C. §§ 80b-6(1)-(2); (iv) made false statements in filings with the Commission in violation of section 207 of the Advisers Act, 15 U.S.C. § 80b-7; (v) made false statements in advertising materials in violation of section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-1(a)(5), 17 C.F.R. § 275.206(4)-1(a)(5); and (vi) falsified records in violation of section 204 of the Advisers Act, 15 U.S.C. § 80b-4.

On May 6, 2010, Jenkins, who is acting pro se, filed a motion fashioned as a "Motion to Dismiss." However, in that

motion, Jenkins asked the Court to find in her favor on the grounds that there are no "genuine issues about any material facts for the Court to consider as a matter of law." (Def.'s Mot. to Dismiss 2, ECF No. 45 (hereinafter Def.'s Mot.).) She proceeded to make factual assertions that she claimed prevent the Commission from proving its case against her, and included a number of factual exhibits. Accordingly, on June 29, 2010, the Court notified the parties that it would treat Jenkins's motion as one for summary judgment pursuant to Rule 12(d) of the Federal Rules of Civil Procedure.

The Commission's cross-motion is the flip side of Jenkins's: it contends the undisputed facts support a grant of judgment against Jenkins as a matter of law. Both motions hone in on the key question at the heart of the Commission's case: was there ever really a Swiss client?

B. Facts

1. Locke and the Purported Swiss Client

Except as noted, the following facts are undisputed. Jenkins is the founder and sole owner of Locke, an investment advisory firm with an office in Newport. (See Pl.'s Statement of Undisputed Facts in Support of Mot. for Sum. J. ¶¶ 1-2, ECF No. 61 (hereinafter "Pl.'s Facts").)

One criterion institutional investors consider when deciding whether to use an investment advisor is its assets

under management. For instance, some investors will only patronize firms that have a minimum threshold of assets under management. (See id. ¶¶ 6-7; Def.'s Statement Submitted in Resp. to Pl.'s Mot. for Summ. J.'s Statement of Disputed Facts ¶ 6, ECF No. 66 (hereinafter "Def.'s Disputed Facts").) According to the Commission, investors rely on commercial services that measure advisory firms' assets under management, as well as other performance data. Jenkins responds that some investors avoid commercial databases and prefer to do their own diligence to avoid bias. The Commission also indicates that institutional investors would be deeply troubled by false statements made about an adviser's assets under management, because it would call into doubt the adviser's integrity. Jenkins disputes this statement, but admits that it "may have accurate attributes." (Def.'s Disputed Facts ¶ 9R.)

According to the SEC, in 2008, Locke represented to several commercial services that the firm was managing more than $1 billion in assets. (Pl.'s Facts ¶ 14.) Locke made similar claims with respect to 2006 and 2007 in brochures sent to potential clients. (Id. ¶ 16.) On amendments to Locke's Form ADV – an annual filing submitted to the SEC pursuant to the Advisers Act – Locke listed its assets under management as follows: (i) $1,232,689,661 in April 2007; (ii) $1,306,692,872 in April 2008; and (iii) $1,278,392,478 in March 2009. Jenkins

signed each amendment under the penalties of perjury. (See id. ¶ 12.) While Jenkins disputes all of this, she provides no evidence to rebut it, and the Commission accurately quotes the filings.

Jenkins told her employees that a major portion of Locke's assets under management came from accounts she referred to as "SPB" or "Swiss Private Bank" accounts. (Id. ¶ 19.) Because the client insisted on absolute secrecy, Jenkins explained, only she could communicate with it. Thus, as Jenkins stated at her deposition, her staff would recommend trades, and then Jenkins would pass those trades along to the Swiss client. (Jenkins Dep. 32:13-34:9, ECF No. 67-6.) Jenkins claims not to remember using the term SPB.

During an examination in 2008, Jenkins told the Commission that the Swiss client was confidential and that she communicated all trading information to it personally, by telephone. (Pl.'s Facts ¶ 24.) The agency pressed Jenkins for the identity of the client and data to back up its dealings with Locke. Specifically, the Commission instructed Jenkins to have the custodian of the confidential client's securities accounts forward custodial statements to the Commission. Instead, Jenkins herself gave the Commission spreadsheets bearing the logo "Chase" and containing lists of securities. (See id. ¶¶ 27-30.) She also gave the Commission several of Locke's

computer files, which included spreadsheets titled "Portfolio Appraisal[s]" for the "SPB Accounts." (Id. ¶ 26.) Jenkins disagrees with some of these assertions and at other times says that she does not remember. But again, she offers no evidence to support a contrary version of events.

2. Disputed Facts Regarding the Purported Swiss Client

The Commission contends there never was a Swiss client. As proof, it offers the circumstantial evidence summarized below. Jenkins disputes that any of the evidence establishes that she concocted an investor. Where noted, Jenkins also submits evidence to rebut the Commission's allegations.

Jenkins now maintains that the confidential client was a company called AM AG, located at Dufourstrasse 107 in Zurich. (Jenkins Dep. 20:3-10, 24:19-25.) However, the Commission asserts that, during a telephone conversation between Commission staff and Jenkins on December 30, 2008, Jenkins admitted that she had never visited the Swiss client; she had never personally met any representative of the Swiss client; and she did not have phone records of her calls to the Swiss client because she used prepaid phone cards. (See Declaration of Naomi J. Sevilla, Esq. ¶ 6, ECF No. 58 (hereinafter "Sevilla Decl.").) Jenkins disputes that she made these admissions.

Swiss authorities cannot confirm the existence of the company. The Commission contacted the Swiss Financial Market Supervisory Authority ("FINMA"), but FINMA found no Swiss telephone number, corporate registration, or any other trace of a company named AM AG. Although Dufourstrasse 107 is a real address where businesses operate, FINMA found no record of any entity called AM AG using it. FINMA's investigation also turned up nothing on individuals with the names Jenkins provided. The phone number Jenkins gave for AM AG yielded a recorded message saying the subscriber was unavailable. (See Declaration of Tonia J. Tornatore, ECF No. 59, Ex. A.)

The reason the search has come up dry, Jenkins pleads, is that AM AG wants to evade regulation. Once the company caught wind of the Commission's inquiry, she asserts, it went to ground and destroyed clues that might lead to its discovery. To clear her name, she says, Jenkins took Locke's former COO Derrick Webster on a sleuthing trip to Zurich in January 2009. Webster wrote a memorandum chronicling their efforts. (See Def.'s Mot. Ex. J.) Webster and Jenkins visited Dufourstrasse 107, where Jenkins spoke with the landlord. While the landlord did not have any information about a company named AM AG, according to the memorandum, he stated it was common for companies to operate under multiple names. (Id. at 7-8.)

Jenkins and Webster also observed a street sign printed with the letters "AMAG" near Dufourstrasse 107. (See Def.'s Mot. Ex. I 4-6.) Webster's memorandum suggests this may be the last shred of evidence that AM AG existed. The Commission responds that "the street sign can be explained by the fact that AMAG Automobil und Motoren AG, a major Swiss automotive company, operates a car dealership and parking garage at Dufourstrasse 182."[1] (Pl.'s Statement of Disputed Facts in Opposition to Def.'s Mot. to Dismiss 11-12, ECF No. 51 (hereinafter "Pl.'s Disputed Facts").) The Commission provides phone book records confirming this fact. (Declaration of Frank C. Huntington ¶ 12, ECF No. 57 (hereinafter "Huntington Decl.").)

According to the Commission, Jenkins manufactured a body of records about AM AG to breathe life into the illusion. First, the Commission says, she cooked up custodial trading data. The Commission contacted JPMorgan Chase & Co. ("Chase") about AM AG, but Chase has no record of accounts for a company by that name located at Dufourstrasse 107 in Zurich. (See Pl.'s Facts ¶ 37.) Chase reviewed the statements with the "Chase" logo provided by Jenkins and noted that the documents are not in the format Chase uses for its account statements and custodial records. (Affidavit of JPMorgan Chase & Co. Representative, Andrew R.

[1] Jenkins does not argue that her client is AMAG Automobil und Motoren AG.

Kosloff ¶ 4, ECF No. 54.) The Commission also extracted several files from Locke's computers containing the same "Chase" logo that appears on the charts Jenkins gave the Commission. One, a pdf file titled "chasenewlogo," consisted only of the logo. The second, a Microsoft Word document titled "chase in word doc" included two examples of the "Chase" logo. Both files were created three days after the Commission requested verification of the Swiss client's trading data.

Jenkins offers several theories to explain the logo files. She says the files were saved to her computer while making the reconciliations at the Commission's request; she says that, according to an unnamed forensic expert, computers on which users have navigated to a company's website might contain images of the company's logo; and she says someone may have tampered with Locke's computers during a break-in. Yet, the Newport police did not find evidence of forced entry at the premises and closed their file on the incident. (See Affidavit of Detective Christopher Hayes, Newport, Rhode Island Police Department ¶¶ 3-5, ECF No. 55.)

Second, the Commission accuses Jenkins of creating a fake email address for AM AG. In September 2008, Jenkins told the Commission that she set up a Microsoft Hotmail account in July 2008, named "subadvtrades," to track her communications with the Swiss client. (See Pl.'s Facts ¶¶ 40-41; Declaration of Marie

Hagelstein, ECF No. 56, Ex. H.) However, records for the email account demonstrate that it was a ruse, the Commission says. Jenkins sometimes waited days or weeks before forwarding trade recommendations from her staff to the "subadvtrades" address. As an example, data from Locke's computers show that on August 8, 2008, Jenkins passed along trade recommendations from July 7, July 15, July 18, August 5, and August 7 all at once.

In addition, the pattern of logins to the account is suspicious, according to the Commission. Data collected from Microsoft show only four logins between July 1, 2008, the date Jenkins admittedly created the account, and August 31: August 13, August 19, August 20, and August 31. This means the alleged client did not log in at all on six days Jenkins sent trade recommendations: July 11, July 14, July 18, August 8, August 22, and August 29. Moreover, the internet protocol ("IP") address used to access the account on August 19 and August 20 is in New York, New York, and is the same IP address that was used on July 1 when Jenkins created the account. (Huntington Decl. Ex. 4.) The IP address associated with the August 13 login was in Providence, Rhode Island. (Id.)

Jenkins condemns the login data provided by Microsoft as "significantly incomplete." (Def.'s Mot. to Dismiss 14.) Microsoft's records must be off, she deduces, because "LOCKE emails produced for other purposes show activity from and to

this account while no action is recorded in [the] particular email account history" from Microsoft. (Id.) Jenkins has not, however, submitted any such "emails produced for other purposes" to the Court.

Third, the Commission alleges that Jenkins mimed fee transactions with AM AG by moving funds through several accounts under her control. She gave the Commission cash flow statements for 2007 and 2008 that list several payments from "SPB" into Locke's account at Wachovia. (See Huntington Decl. Ex. 16.) However, the payments originated from an account belonging to Locke's hedge fund. (See id. Exs. 17-18.) Not only does she fail to explain these mysterious "SPB" transactions, Jenkins now claims that payment from the Swiss client cannot be confirmed, because Locke was paid in unverifiable "soft dollar" payments. (Jenkins Dep. 138-40, 173)

Apart from these factual disputes, the backbone of Jenkins's defense is that the Commission has hamstrung her by suppressing exculpatory records and refusing to consider their contents. The Commission, Jenkins contends, now possesses the only copies of the custodial statements and backup data that confirm AM AG's trading history. Locke's copies were stolen during the break-in, Jenkins says, and the Commission has ignored her requests for the materials she produced to it during discovery. (See Def.'s Mot. 2, 15.) In particular, Jenkins

focuses on data that have supposedly been "verified" through a third-party software system called "Advent Axys." (See id. at 9.) She protests that the Commission has the information, but has refused to review it and will not turn it over to her. The Commission responds that it gave Jenkins access to anything she wanted to see in November 2009.

On October 8, 2010, the Court held a hearing on the parties' cross-motions. At the hearing, Jenkins reasserted these allegations. To ensure these documents were available to Jenkins, the Court ordered the Commission to either provide Jenkins with a complete set of the documents she previously had produced or allow Jenkins to view the documents at its office. See Oct. 15, 2010 Order 1-2; see also Fed. R. Civ. P. 56(d)(3) (stating that if a non-movant indicates that she cannot present material facts to justify her opposition to a summary-judgment motion, a court may "issue any other appropriate order"). Jenkins was also granted leave to file a supplemental memorandum if during the course of her document review she discovered evidence supporting her motion. See Oct. 15, 2010 Order 1-2. Thereafter, Jenkins and the Commission filed supplemental memoranda. Jenkins did not proffer any newly-found exonerative evidence.

II. Legal Standard

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). "A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Taylor v. Am. Chemistry Council, 576 F.3d 16, 24 (1st Cir. 2009). In considering each motion, the Court must view the facts in the light most flattering to the non-moving party, and draw all reasonable inferences in that party's favor. Dávila v. Corporación de Puerto Rico Para La Difusión Pública, 498 F.3d 9, 12 (1st Cir. 2007). "Once the moving party avers the absence of genuine issues of material fact, the nonmovant must show that a factual dispute does exist." Velázquez-Fernández v. NCE Foods, Inc., 476 F.3d 6, 10 (1st Cir. 2007) (quoting Ingram v. Brink's, Inc., 414 F.3d 222, 228-29 (1st Cir. 2005)). Summary judgment cannot be defeated, however, "by relying on improbable inferences, conclusory allegations or rank speculation." Id.

III. Discussion

A. Jenkins's Motion

The Court can dispose of many of Jenkins's arguments with little difficulty. The majority of her factual assertions are either unsupported by competent evidence, immaterial to whether

she may be found liable for the asserted securities law violations, or both. She argues that:

(i) she was never properly served with process, yet Magistrate Judge Martin has already found to the contrary (see Memorandum and Order 7, ECF No. 37), and Jenkins provides no basis to reconsider that ruling, see United States v. Vigneau, 337 F.3d 62, 67 (1st Cir. 2003) (explaining that the law of the case doctrine "precludes relitigation of the legal issues presented in successive stages of a single case once those issues have been decided" (quoting Field v. Mans, 157 F.3d 35, 40 (1st Cir. 1998)));

(ii) the Commission sent copies of pleadings in this case to financial institutions to destroy Jenkins's credit; but Jenkins provides no evidence that financial institutions received pleadings, which are public documents, from the Commission; this charge is also irrelevant to the claims against her;

(iii) the Commission refused to review certain documents produced by Jenkins; but even if true, this fact would not prevent liability for securities fraud if the Commission has sufficient evidence to prove its case; nor is the Court aware of any authority, cited by Jenkins or otherwise, that requires a plaintiff in a civil case to review all materials produced by the defendant;

(iv) the Commission received faulty data from untrustworthy former employees of Locke, as well as from her ex-husband and his lawyer, but the Commission does not rely on any of this information in seeking judgment against Jenkins;

(v) the Commission fabricated figures for Locke's assets under management; but Jenkins does not support the assertion with any evidence, and she does not identify the alleged fabrications;

(vi) Locke never lied in marketing materials about its compliance with the Global Investment Performance Standards (GIPS), because a third-party marketing firm circulated the marketing information; but the Commission does not seek summary judgment on grounds of misrepresentations about GIPS compliance; it is also clear that Jenkins, and not the marketing firm, distributed the marketing materials in question (see Jenkins Dep. 65:15-66:25, 87:22-88:6 & Exs. 5, 8, Ex. I to Pl.'s App. in Support of Sum. J., ECF No. 60); and

(vii) the Commission approved Locke's registration as an investment adviser in 1997 knowing that Locke was managing assets for the purported Swiss client; but this assertion contradicts her filings with the Commission, which show no assets under management for 1997-1999, and even if it were true, this would not absolve Jenkins of liability if the Commission proves she made up the client (see Sevilla Decl. Exs. 1-3).

The remaining factual assertions in Jenkins's motion are material to the issue of whether Jenkins lied to Locke's customers and the Commission about the Swiss client. As discussed above, they all support her vow that AM AG is real. She claims that (i) there is evidence of AM AG's existence; (ii) the SEC possesses trading data that detail Locke's work for AM AG; (iii) that data was stolen from Locke's office, so Jenkins no longer has copies of it; and (iv) the data from Microsoft regarding the "subadvtrades" account does not reflect all her correspondence with AM AG.

It is plain that none of these assertions, even if proven, would entitle Jenkins to judgment as a matter of law. The SEC has adduced substantial damning evidence suggesting she lied about AM AG and tried desperately to cover her tracks. Even if Jenkins could prove that additional trade verification data was stolen and present that data, provide additional emails to or from the "subadvtrades" account, and verify the information about the Dufourstrasse address in Zurich — and it is highly unlikely that she could do all this, for the reasons discussed below — this would not be enough to conclusively refute the Commission's allegations and entitle her to summary judgment. This conclusion is obvious in consideration of the Commission's extensive evidence of misconduct detailed above. Thus, Jenkins's motion must be denied.

B. The Commission's Motion

As stated above, the Commission alleges that Jenkins violated federal securities laws by committing fraud, making false statements in filings and advertising materials, and falsifying records. The lynchpin of its claim is the fake Swiss client — if the Commission can show that there is no genuine factual dispute with respect to Jenkins's fabrication of AM AG, the other elements of the violations are easily established.

In short, Jenkins has produced no competent or credible evidence refuting the Commission's motion. Jenkins submitted reams of memoranda containing bald assertions and loosely-woven tales. Generally, Jenkins's "disputed" facts fall into three categories: (1) bald assertions unsupported by competent or admissible evidence; (2) "facts" supported only by Jenkins's own declarations, which are uncorroborated and so incredible that no reasonable jury could believe their veracity; and (3) immaterial fact disputes — fact disputes that, even when viewed in the light most favorable to Jenkins, do not preclude summary judgment in favor of the Commission.

With respect to the "disputed" facts falling into the first category, the law is clear that Jenkins may not, in opposing the Commission's motion, "rest upon conclusory allegations, improbable inferences, and unsupported speculation." Aponte-Rosario v. Acevedo-Vila, 617 F.3d 1, 12 (1st Cir. 2010) (quoting

Vineberg v. Bissonnette, 548 F.3d 50, 56 (1st Cir. 2008)); see also SEC v. Ficken, 546 F.3d 45, 51 (1st Cir. 2008) (in granting summary judgment for Plaintiff SEC, the First Circuit noted that "[e]ven in cases where elusive concepts such as motive or intent are at issue, summary judgment may be appropriate if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation." (quoting Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990))); Ciampi v. Zuczek, 598 F. Supp. 2d 257, 262 (D.R.I. 2009) ("If the evidence [adduced in opposition to the motion] is merely colorable, or is not significantly probative, summary judgment may be granted." (quoting Cadle Co. v. Hayes, 116 F.3d 957, 960 (1st Cir. 1997) (alteration in original))); Fed. R. Civ. P. 56(c)(1)(a) (requiring a party to cite materials in the record to support his assertion that a fact is genuinely disputed). Unless Jenkins can point to competent evidence supporting her colorable assertions, the factual disputes are not genuine. While her bald assertions are too numerous to repeat here, they include various stories explaining away the complete lack of competent evidence supporting the Swiss client's existence, including details of an unsuccessful trip to Switzerland to track down AM AG and speculation that Swiss authorities used a wrong spelling in its verification process.

Jenkins tries to support some of her bald assertions with incompetent evidence. For example, Jenkins submits purported correspondence with AM AG — an investment management agreement and a termination letter, both ostensibly signed by a "Pieter Hofmman," whom she claims is an AM AG executive.[2] (See ECF Nos. 65-16, 65-18.) The documents would be inadmissible pursuant to Fed. R. Evid. 901(a), rendering authentication a condition precedent to admission. In light of the volume of evidence evincing Jenkins's untruthfulness, these documents would not be admissible without corroboration of their authenticity by a source other than Jenkins herself. Jenkins has not provided any substantiation in her filings,[3] and thus these documents constitute incompetent evidence.

The second category of potential factual disputes consists of statements supported only by Jenkins's own declarations and deposition testimony. Her declarations and deposition testimony contain general statements that there was a Swiss client and she did not knowingly make false statements. (See generally

[2] Though the purported executive's surname is spelled "Hoffman" on the termination letter, Jenkins now maintains that his name is actually spelled "Hofmann."

[3] Derrick Webster, a former employee of Locke, states in his affidavit that Jenkins showed him (in connection with the 2008 SEC examination) the purported contract between Pieter Hofmann and Locke, but Webster asserts no personal knowledge of its authenticity. (Affidavit of Derrick Webster 6-7 (hereinafter "Webster Aff."), ECF No. 65-12.)

Declaration of Leila C. Jenkins, ECF No. 65-1; Affirmation of Leila C. Jenkins (hereinafter "Jenkins Aff."), ECF No. 67-1.) However, other than her own word, Jenkins has not provided a shred of competent evidence corroborating the existence of the Swiss client. There is no trace of payment from the purported Swiss client to Locke; no evidence that Locke had its assets under management; neither the Swiss authorities nor Chase have any record of AM AG; and there is no other evidence of the purported Swiss client's existence.[4]

Simply put, no reasonable jury could believe Jenkins's incredible account in light of the overwhelming evidence that she manufactured stories and records and in the absence of a single piece of evidence corroborating her account.[5] A non-moving party may not defeat summary judgment by simply alleging the impossible in a self-serving declaration or affidavit. See, e.g., United States v. U.S. Currency, $864,400.00, No. 09-1935, 2010 WL 5189543, at *2 (4th Cir. Dec. 10, 2010) (affirming grant

[4] Grasping at straws, Jenkins now asserts that maybe the Swiss client was not Swiss at all; maybe the client was actually registered in another country. Not surprisingly, she provides no evidence of AM AG's registration in any country.

[5] Jenkins argues that the declarations of Deborah Henderson and Henry Rudy and the affidavit of Derrick Webster corroborate her account. These attestations, however, are devoid of any personal knowledge of the Swiss client or even circumstantial evidence tending to support its existence. (See generally Declaration of Deborah Henderson, ECF No. 65-7; Declaration of Henry Rudy, ECF No. 65-8; Webster Aff.)

of summary judgment for government in forfeiture proceeding where no material fact dispute existed because defendant's self-serving declarations were "incredible, and lack[ed] any basis in evidence"); Jeffreys v. City of New York, 426 F.3d 549, 555 (2d Cir. 2005) (holding there was no genuine issue of material fact where "[n]o reasonable person would undertake the suspension of disbelief necessary to give credit to" plaintiff's version of events); Penny v. United Parcel Serv., 128 F.3d 408, 416 (6th Cir. 1997) (concluding that "the plaintiff could not survive summary judgment based on . . . inherently unreliable evidence").

Jenkins offers one exhibit worth brief discussion. She submits computer screenshots of Advent Axys, a program Locke ostensibly used to keep track of trades for the Swiss client. (See Ex. W5-1, ECF No. 65-17.) She says the data has been "verified" through a third-party software system. However, the Advent Axys evidence lends no help to Jenkins's defense. First, Jenkins has not put the evidence into any meaningful context for the Court. The screenshots consist only of a jumble of numbers, and Jenkins has not provided the affidavit or deposition of a qualified person attesting to their authenticity, explaining the nature of the program, and detailing how the screenshots prove the existence of the Swiss client. This evidence therefore is not sufficient to preclude judgment in the Commission's favor.

Second, even if it is true that other employees entered most of the Advent Axys data at Jenkins's direction (as Jenkins argues), the evidence suffers from the same infirmity as her other evidence: it originates from Jenkins herself, and she does not allege that the employees have independent, personal knowledge of the trade data. Without any corroboration of the client's existence, no reasonable jury could find that this inherently unreliable evidence tends to prove there is a Swiss client.

The only true factual dispute, then, is whether Jenkins admitted to Commission staff that she never met agents of the purported Swiss client. However, this dispute is not material. Presuming Jenkins did not make the admission, the Commission's case is still strong enough to warrant summary judgment in its favor.[6]

Finally, Jenkins's claim that the Commission is withholding material evidence proving the existence of AM AG falls flat. According to Jenkins, the Swiss client's custodial statements are the "critical missing data" that would exonerate her. (Jenkins Aff. 2.) She contends these documents were stolen from Locke's Newport office during the alleged break-in. (Id. 2-3.)

[6] Jenkins also reasserts her claim that she was not properly served with process. As previously noted, the law of the case doctrine precludes relitigation of the issue. See supra Part III.A (citing Vigneau, 337 F.3d at 67).

But as noted previously, the Court has taken pains to ensure that the Commission did not withhold documents from Jenkins. See supra p. 12; see also Oct. 15, 2010 Order. Commission staff attested that the Commission did not confiscate any original documents or computers belonging to Locke or Jenkins and, in response to the Court's October 15, 2010 Order, the Commission provided Jenkins with copies of all materials she had previously produced to the Commission, the materials produced by third parties that Jenkins specifically requested, and all materials produced by third parties in electronic format. (Second Supp. Decl. Huntington 9, ECF No. 78.) The Court is satisfied that the Commission is not withholding the custodial records.

In sum, there are no genuine issues of material fact precluding summary judgment for the Commission. Jenkins has generally failed to present competent, admissible evidence in opposition to the Commission's motion; and the competent evidence that Jenkins has presented, namely her own declarations, are so inherently unbelievable in light of the evidence proffered by the Commission that no reasonable jury could find it credible.

C. Violations of Federal Securities Laws

The Commission alleges that Jenkins, as the President and sole owner of Locke, flouted a number of federal securities laws

in furtherance of a fraudulent scheme. (See Compl. For Inj. And Other Relief ¶ 1-2, ECF No. 1.) As established above, the undisputed facts reveal that Jenkins fabricated a massive Swiss client to create business among potential investors. She then included the fictitious client and its fictitious assets in Locke's records, SEC filings, and marketing materials, thereby inflating Locke's apparent assets under management to the SEC and clients alike.

The Commission first alleges that Jenkins committed fraud in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), Rule 10b-5, 17 C.F.R. § 240.10b-5, and Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a). Under Section 10(b) of the Exchange Act, Rule 10b-5, and Section 17(a) of the Securities Act, it is unlawful to use a fraudulent device in connection with the sale of any security. See 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; 15 U.S.C. § 77q(a). To establish a violation of Section 17(a) or Section 10(b), or Rule 10b-5, the Commission must establish that the defendant (1) made a material misrepresentation; (2) in connection with the purchase or sale of securities; (3) with scienter. SEC v. Gillespie, 349 Fed. Appx. 129, 130 (9th Cir. 2009); SEC v. George, 426 F.3d 786, 792 (6th Cir. 2005).

The following facts are undisputed by competent, credible evidence. Jenkins made material misrepresentations in Locke's

Form ADV for the years 2007, 2008, and 2009. "A misrepresentation is material if there is a substantial likelihood that the misrepresentation would affect the behavior of a reasonable investor," Ficken, 546 F.3d at 47, and it is undisputed that investors rely on assets under management in deciding to which investment advisor to entrust their funds. See SEC v. K.W Brown & Co., 555 F. Supp. 2d 1275, 1309-10 (S.D. Fla. 2007) (concluding that misrepresentations about assets under management on Forms ADV are material). The only reasonable inference that can be drawn from the facts of this case is that the misrepresentations were made to induce real customers to place their assets under Locke's management for security trading, which sufficiently connects Jenkins's conduct to the sale of securities. See SEC v. Zandford, 535 U.S. 813, 813-14 (2002) (holding that the "in connection with" requirement of Section 10(b) should be construed broadly); see also Pinter v. Dahl, 486 U.S. 622, 643 (1988) (noting that the language "in the offer or sale of any securities" in Section 17(a) should be construed broadly to "encompass the entire selling process").

As for the scienter element, the only reasonable inference that can be drawn from the scheme is that Jenkins acted with scienter; as CEO and President of Locke, Jenkins must have known her representations were false. See Ficken, 546 F.3d at 47 ("Scienter is an intention to deceive, manipulate, or defraud,"

which in the First Circuit requires "a showing of either conscious intent to defraud or a high degree of recklessness.") (internal quotation and citation omitted). Accordingly, the Commission has demonstrated that Jenkins's fraudulent acts constitute violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5.

The undisputed facts easily establish that Jenkins also breached or aided and abetted in breaching the anti-fraud, bookkeeping, reporting, and advertising regulation provisions of the Advisers Act and the rules promulgated thereunder. See 15 U.S.C. §§ 80b-4, 80b-6(1),(2),(4), 80b-7; 17 C.F.R. § 275.206(4)-1(a)(5). Sections 206(1) and 206(2) of the Advisers Act make it unlawful for an investment adviser[7] to operate a fraud upon a client or prospective client. See 15 U.S.C. §§ 80b-6(1),(2). Facts establishing a violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act also support a violation of Sections 206(1) and 206(2) of the Advisers Act. SEC v. Haligiannis, 470 F. Supp. 2d 373, 383 (S.D.N.Y. 2007). Jenkins therefore violated Sections 206(1) and 206(2) of the Advisers Act.

Under Section 207, it is unlawful to willfully make a material misrepresentation or to omit a material fact in a

[7] Jenkins, as the President and CEO of Locke, is an investment adviser within the meaning of section 202(a)(11) of the Advisers Act. See 15 U.S.C. § 80b-2(a)(11).

registration application or report filed with the SEC under Section 203. See 15 U.S.C. § 80b-7. Here, Jenkins aided and abetted Locke's violation of Section 207 by signing Forms ADV that contained material misrepresentations of Locke's assets under management.[8] The Commission accordingly has demonstrated that Jenkins violated Section 207 of the Advisers Act.

Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) make it unlawful for an investment adviser to distribute advertising materials that contain untrue statements of material facts or are otherwise false or misleading. Section 204 of the Advisers Act and the rules promulgated thereunder require an investment adviser to keep true, accurate, and current books and records. Jenkins aided and abetted Locke in violation of these sections by distributing marketing materials and, during the Commission's 2008 examination, producing books and records containing material untrue statements about, inter alia, Locke's assets under management. The Commission therefore has met its burden with respect to Section 204, Rule 204-2(a), Section 206(4), and Rule 206(4)-1(a)(5).

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[8] Aiding and abetting liability requires the Commission to show that (1) a primary securities law violation occurred by an independent violator; (2) the aider and abettor knowingly and substantially assisted the primary violator; and (3) the aider and abettor knew or was aware that her role was part of the improper activity. SEC v. Slocum, Gordon & Co., 334 F. Supp. 2d 144, 184 (D.R.I. 2004). Jenkins's actions here plainly establish aiding and abetting liability.

Accordingly, the Court grants the Commission's motion for summary judgment on the six claims for relief set forth in the Complaint. In light of this, the Court next ventures to fashion the appropriate remedy.

IV. Remedies

As remedy for Jenkins's wrongs, the Commission seeks a permanent injunction, the disgorgement of ill-gotten gains with prejudgment interest, and the imposition of a civil monetary penalty.

A. Permanent Injunction

Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), Section 21(d)(1) of the Exchange Act, 15 U.S.C. § 78u(d)(2), and Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d), each provide that a court may issue a permanent injunction where future securities law violations are reasonably likely. See SEC v. Sargent, 329 F.3d 34, 39 (1st Cir. 2003); see also SEC v. Cavanagh, 155 F.3d 129, 135 (2d Cir. 1998). The facts, as proffered by the Commission and not refuted by Jenkins with competent and credible evidence, suggest strongly that a permanent injunction is appropriate. Over the course of years, Jenkins fabricated a major client, inflated Locke's assets under management in advertising materials, and then lied to the Commission to evade prosecution. Because the Court easily finds that it is reasonably likely Jenkins would continue violating

securities laws if not enjoined from doing so, the Commission's request for an order enjoining Jenkins from committing future violations is granted.

B. Damages

In connection with securities fraud, the Court has discretion to order disgorgement. SEC v. Happ, 392 F.3d 12, 31 (1st Cir. 2004). Disgorgement serves both to ensure that the perpetuator of a fraud is not unjustly enriched by the fraudulent act and to deter potential violators. SEC v. First City Financial Corp., 890 F.2d 1215, 1231 (D.C. Cir. 1989). The Court may order disgorgement in an amount reflecting "a reasonable approximation of profits causally connected to the violation." Happ, 392 F.3d at 31 (quoting First City Financial Corp., Ltd., 890 F.2d at 1231); see also SEC v. Druffner, 517 F. Supp. 2d 502, 512 (D. Mass. 2007) (noting that disgorgement must be "causally connected to the violation but it need not be figured with exactitude") (internal quotation and citation omitted).

The Commission seeks disgorgement of $1,781,520, which reflects the amount Jenkins, as Locke's sole owner, collected in advisory fees from Locke's real clients between 2007 and 2009. Jenkins collected these fees, according to the Commission, by attracting customers with Locke's inflated assets under management and performance history, starting in late 2006. The

Commission also asks for prejudgment interest on disgorgement in the amount of $110,956, which is calculated by applying the tax-underpayment rate. See 26 U.S.C. § 6621(a)(2); SEC v. First Jersey Securities, Inc., 101 F.3d 1450, 1476 (2d Cir. 1996) (ordering prejudgment interest on disgorgement using the tax-underpayment rate).

After entering default judgment against Locke, this Court ordered disgorgement in the amount of $1,892,476, based on an affidavit from Commission staff, indicating that the amount represented Locke's profits since perpetrating the fraud, plus prejudgment interest. See SEC v. Locke Capital Management, Inc., 726 F. Supp. 2d 105, 108 (D.R.I. 2010) (citing Huntington Decl. ¶ 4). The Commission now seeks disgorgement against Jenkins based on similar evidence proffered by its staff. (See generally Huntington Decl., ECF No. 41-2.) The Court concludes that the $1,781,520, plus prejudgment interest, represents a reasonable approximation of those profits causally connected to Jenkins's fraudulent conduct. Because Locke and Jenkins's violations are so closely intertwined, Jenkins will be held jointly and severally liable with Locke for disgorgement of $1,892,476. See First Jersey Securities, 101 F.3d at 1475-76 ("[W]here a firm has received gains through its unlawful conduct, where its owner and chief executive officer has collaborated in that conduct and has profited from the

violations . . . it is within the discretion of the court to determine that the owner-officer too should be subject, on a joint and several basis, to the disgorgement order."); see also SEC v. Platforms Wireless Intern. Corp., 617 F.3d 1072, 1098-99 (9th Cir. 2010) (noting that joint and several liability is appropriate "where two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws").

In addition to disgorgement, Section 20(d) of the Securities Act, Section 21(d) of the Exchange Act, and Section 209(e) of the Advisers Act each provide for three tiers of sanctions, with greater penalties for more flagrant violations. See 15 U.S.C. § 77t(d)(2); 15 U.S.C. § 78u(d)(3); 15 U.S.C. §80b-9(e). All violations are subject to first-tier sanctions, see 15 U.S.C. § 77t(d)(2); 15 U.S.C. § 78u(d)(3); 15 U.S.C. § 80b-9(e); second-tier sanctions are permissible for violations involving "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," id.; and sanctions are ratcheted up to the third tier when the violations involved fraud and "resulted in substantial losses or created a significant risk of substantial losses to other persons." Id. Civil penalties serve a dual purpose: to punish the wrongdoer and to deter future violators. SEC v. Opulentica, LLC, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007).

The Commission asks for a third-tier penalty for Jenkins, or more specifically, the greater of $130,000 per violation or the gross pecuniary gain of $1,781,520. The Commission, however, does not detail how Jenkins's conduct caused substantial loss, or the risk thereof, to others. Rather, the Commission states only that Jenkins's egregious and fraudulent conduct substantially expanded Locke's business. The Commission therefore has failed to demonstrate that third-tier sanctions are appropriate. The facts do, however, lend themselves easily to second-tier sanctions. Jenkins's conduct plainly involved fraud and deceit – she cooked up the Swiss client, falsified records and SEC filings, and made misrepresentations to prospective clients in marketing materials.

A court has the discretion to impose, for each violation, a second-tier sanction on a natural person up to the greater of $65,000 or the gross pecuniary gain. See id.; 17 C.F.R. Pt. 201, Subpt. E, Tbl. III (providing inflation-adjusted penalties). Jenkins's gross pecuniary gain was $1,781,520, and she committed six violations. The plain language of the Acts suggests that the per-violation ceiling is the greater of the statutory maximum of $65,000 or Jenkins's pecuniary gain. But, where a defendant has violated a number of securities laws in carrying out a single scheme, as here, courts generally have imposed a single penalty. See, e.g., SEC v. Brown, 643 F. Supp.

2d 1088, 1093 (D. Minn. 2009) (imposing a single penalty where defendant violated three statutes during a single course of conduct); SEC v. Rabinovich & Associates, LP, No. 07 Civ. 10547(GEL), 2008 WL 4937360, at *6 (S.D.N.Y. 2008) (imposing a single penalty where defendant violated many securities laws arising from a single scheme). Moreover, in determining the appropriate civil penalty, courts consider the following non-exclusive factors: (1) whether the violation resulted in substantial loss or risk of loss to others; (2) the egregiousness of the conduct; (3) the defendant's scienter; (4) whether the conduct was aberrational or recurring; and (5) whether defendant's financial situation supports a reduction. Opulentica, 479 F. Supp. 2d at 331.

Jenkins's conduct spanned a number of years and reflects a great effort to piece together a fraudulent scheme, cover it up, and then continue to lie about it throughout this litigation. Such an elaborate scheme no doubt evinces Jenkins's conscious intent to defraud and supports findings of recurring and egregious behavior. The only factors weighing in Jenkins's favor, then, are the lack of evidence demonstrating substantial harm or the risk of substantial harm to others and what the Court understands to be Jenkins's tenuous financial situation. In light of all this, a penalty equal to the amount of Jenkins's pecuniary gain, or $1,781,520, is appropriate.

The Court also wishes to revisit the civil penalty levied upon Locke in the Court's July 21, 2010 Order and Opinion ("July 21, 2010 Order") entering default judgment. See SEC v. Locke Capital Management, Inc., 726 F. Supp. 2d 105, 108-09 (D.R.I. 2010). The July 21, 2010 Order fined Locke $5,677,428, or three times disgorgement plus prejudgment interest. Id. at 109-10. The statutory language arguably provides for such a result, stating that for a second-tier sanction,

> the amount of penalty for each such violation shall not exceed the greater of (i) [$65,000] for a natural person or [$325,000] for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation . . .

15 U.S.C. § 80b-9 (e)(2)(B); 17 C.F.R. Pt. 201, Subpt. E, Tbl. III (providing inflation-adjusted penalties); see also 15 U.S.C. § 77t(d)(2)(B); 15 U.S.C. § 78u(d)(3)(B). Because "for each such violation" modifies both statutory ceilings (which, for a second-tier sanction on other than a natural person, is $325,000 or the gross pecuniary gain), the plain language arguably permits the imposition of a penalty greater than the total gross pecuniary gain, where the gross pecuniary gain is attributable to multiple violations. For example, here, the Commission proved Jenkins flouted six securities laws in executing her fraudulent scheme. Each violation is reasonably related to her gross gain from the scheme, but the pecuniary gain is not unique to any one of the violations. However, the Court has not found

authority, and the Commission does not offer any, supporting a civil penalty under these Sections that exceeds the gross pecuniary gain accrued from the sum of violations. Upon reflection, the Court has determined that a more appropriate civil penalty for Locke, therefore, is $1,781,520, or the gross pecuniary gain attributable to all six violations.

V. Conclusion

For the reasons stated herein, the Court DENIES Jenkins's motion for summary judgment and GRANTS the Commission's motion for summary judgment. By a separate Final Judgment, Jenkins will be enjoined from committing future securities violations; she will be held jointly and severally liable with Locke for disgorgement of $1,892,476; and she will be ordered to pay $1,781,520 in civil penalties. The Court also amends its July 21, 2010 Order in this matter to reflect a civil penalty of $1,781,520 against Locke.

IT IS SO ORDERED.

/s/ William E. Smith
William E. Smith
United States District Judge
Date: June 30, 2011

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	
v.	)	C.A. No. 09-100 S
LOCKE CAPITAL MANAGEMENT, INC. and LEILA C. JENKINS,	)	
Defendants.	)	

FINAL JUDGMENT AS TO
DEFENDANT LOCKE CAPITAL MANAGEMENT, INC.

Plaintiff Securities and Exchange Commission ("the Commission") having filed a Complaint on March 9, 2009, a default having been entered against defendant Locke Capital Management, Inc. ("Locke") on March 15, 2010, default judgment having entered against Locke on July 21, 2010, and the Court having considered the Commission's motion for entry of default judgment and all the pleadings and evidence submitted in support thereof:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Locke and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating

Section 17(a) of the Securities Act of 1933 ("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 to state 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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Locke and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by, directly or indirectly, 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.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Locke and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2)] by, directly or indirectly, using the mails or any means or instrumentality of interstate commerce to: (a) employ any device, scheme, or artifice to defraud any client or prospective

client; or (b) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Locke and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 207 of the Advisers Act [15 U.S.C. § 80b-7] by willfully:

(a) making an untrue statement of a material fact in a registration application or report filed with the Commission under Section 203 of the Advisers Act [15 U.S.C. § 80b-3] or Section 204 of the Advisers Act [15 U.S.C. § 80b-4]; or

(b) omitting to state in any such application or report any material fact which is required to be stated therein.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Locke and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive

actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-1(a)(5) thereunder [17 C.F.R. § 206(4)-1(a)(5)] by, directly or indirectly, publishing, circulating or distributing any advertisement that contains an untrue statement of a material fact or which is otherwise false or misleading.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Locke and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), and 204-2(a)(16) thereunder [17 C.F.R. §§ 275.204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16)] by failing to make and keep true, accurate and current books and records, including, without limitation:

(a) accurate trial balances and financial statements;

(b) a list or other record of all accounts for which Locke has discretionary authority with respect to any funds or transactions;

(c) originals or copies of all written agreements between Locke and any client;

(d) if Locke pays a cash fee for solicitation activities, all written acknowledgements of receipt obtained from any client pursuant to Rule 206(4)-3(a)(2)(iii)(B) [17 C.F.R. § 275.206(4)-3(a)(2)(iii)(B)] and copies of all disclosure documents delivered to clients by solicitors pursuant to Rule 206(4)-3 [17 C.F.R. § 275.206(4)-3]; and

(e) all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment article, investment letter, bulletin or other communication that Locke circulates or distributes, directly or indirectly, to ten or more persons (other than persons connected with Locke); provided, however, that with respect to the performance of managed accounts, the retention of all account statements, if they reflect debits, credits, and other transactions in a client's account for the period of the statement,

and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy this requirement.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Locke and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Section 204A of the Advisers Act [15 U.S.C. §80b-4A] and Rule 204A-1 thereunder [17 C.F.R. §204A-1] by failing to establish, maintain and enforce a written code of ethics that satisfies the requirements of Rule 204A-1.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)], Locke shall pay disgorgement of $1,781,520, representing profits gained as a result of the conduct alleged in the Complaint, plus pre-judgment interest in the amount of

$110,956, for a total disgorgement amount of $1,892,476. Locke and its co-defendant, Leila C. Jenkins, are jointly and severally liable for disgorgement in that amount. Moreover, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)], Locke shall pay a civil penalty in the amount of $1,781,520. Locke shall make these payments within fourteen (14) days after entry of this Final Judgment. The payments shall be made by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, VA 22312, and shall be accompanied by a letter identifying Locke as a defendant in this action, setting forth the title and civil action number of this action and the name of this Court, and specifying that payment is made pursuant to this Final Judgment. Locke shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Locke as a party to this matter for all purposes, including the implementation and enforcement of this Final Judgment.

X.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, 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 Final Judgment forthwith and without further notice.

IT IS SO ORDERED:

/s/ William E. Smith
William E. Smith
United States District Judge
Date: June 30, 2011

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LOCKE CAPITAL MANAGEMENT, INC. and LEILA C. JENKINS, Defendants.	)	C.A. No. 09-100 S

FINAL JUDGMENT AS TO DEFENDANT LEILA C. JENKINS

After having considered the Commission's motion for summary judgment, all the pleadings and evidence submitted in support thereof, and having granted the Commission's motion in the Court's Opinion and Order also dated this day, June 30, 2011, the Court enters this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Jenkins and her agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("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 to state 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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Jenkins and her agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5] by, directly or indirectly, 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 an 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.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Jenkins and her agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2)] by, directly or indirectly, using the mails or any means or instrumentality of interstate commerce to: (a) employ any device, scheme, or artifice to defraud any client or prospective client; or (b) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Jenkins and her agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from violating Section 207 of the Advisers Act [15 U.S.C. § 80b-7] by willfully:

(a) making an untrue statement of a material fact in a registration application or report filed with the Commission under Section 203 of the Advisers Act [15 U.S.C. § 80b-3] or Section 204 of the Advisers Act [15 U.S.C. § 80b-4]; or

(b) omitting to state in any such application or report any material fact which is required to be stated therein.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Jenkins and her agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from aiding and abetting violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-1(a)(5) thereunder [17

C.F.R. § 206(4)-1(a)(5)] by knowingly providing substantial assistance, directly or indirectly, to any registered investment adviser in publishing, circulating, or distributing any advertisement that contains an untrue statement of a material fact or which is otherwise false or misleading.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Jenkins and her agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are is permanently restrained and enjoined from aiding and abetting violations of Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rules 204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), and 204-2(a)(16) thereunder [17 C.F.R. § § 275.204-2(a)(6), 204-2(a)(8), 204-2(a)(10), 204-2(a)(15), 204-2(a)(16)] by knowingly providing substantial assistance, directly or indirectly, to any registered investment adviser in failing to make and keep true, accurate, and current books and records, including without limitation:

(a) accurate trial balances and financial statements;

(b) a list or other record of all accounts for which the adviser has discretionary authority with respect to any funds, securities, or transactions of any client;

(c) originals or copies of all written agreements between the adviser and any client;

(d) if the adviser pays a cash fee for solicitation activities, all written acknowledgements of receipt obtained from any client pursuant to Rule 206(4)-3(a)(2)(iii)(B) [17 C.F.R. § 275.206(4)-3(a)(2)(iii)(B)] and copies of all disclosure documents delivered to clients by solicitors pursuant to Rule 206(4)-3 [17 C.F.R. § 275.206(4)-3]; and

(e) all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations of the adviser in any notice, circular, advertisement, newspaper article, investment article, investment letter, bulletin or other communication that the adviser circulates or distributes, directly or indirectly, to ten or more persons (other than persons connected with Jenkins); provided, however, that with respect to the performance of managed accounts, the retention of all

account statements, if they reflect debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy this requirement.

VII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)], Jenkins shall pay disgorgement of $1,781,520, representing profits gained as a result of the conduct alleged in the Complaint, plus pre-judgment interest in the amount of $110,956, for a total disgorgement amount of $1,892,476. Jenkins and her co-defendant in this matter, Locke Capital Management, Inc., are jointly and severally liable for disgorgement in this amount. Moreover, pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)], Jenkins shall pay a civil penalty in the amount of $1,781,520. Jenkins shall make these payments within fourteen (14) days after entry of this Final Judgment. The payments shall be made by certified

check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, VA 22312, and shall be accompanied by a letter identifying Jenkins as a defendant in this action, setting forth the title and civil action number of this action and the name of this Court, and specifying that payment is made pursuant to this Final Judgment. Jenkins shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Jenkins as a party to this matter for all purposes, including the implementation and enforcement of this Final Judgment.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that, 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 Final Judgment forthwith and without further notice.

IT IS SO ORDERED:

/s/ William E. Smith
William E. Smith
United States District Judge
Date: June 30, 2011