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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

LARRY C. GROSSMAN and GREGORY J. ADAMS

Respondents.

ADMINISTRATIVE PROCEEDING
FILE NO. 3-15617

RESPONDENT GREGORY J. ADAMS' OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT GREGORY J. ADAMS

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Respondent Gregory J. Adams ("Mr. Adams"), by and through his undersigned counsel, hereby submits this Response in Opposition to the Division of Enforcement's (the "Division") Motion for Summary Disposition Against Respondent Gregory J. Adams. In furtherance of the same, Mr. Adams respectfully states as follows:

BACKGROUND

1. On November 20, 2013, the Division instituted public administrative and cease-and-desist proceedings against Mr. Adams pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Company Act.

2. On February 7, 2014, Mr. Adams executed and submitted an Offer of Settlement to the Division (the "Offer").

3. On March 7, 2014, the Law Judge entered an Order for Partial Stay as to Gregory J. Adams, staying the proceedings in this matter against Mr. Adams pending the Securities and Exchange Commission's (the "Commission") review of Mr. Adams' Offer, and providing that in the event the Commission accepts the Offer, the Law Judge will order the remainder of the proceedings against Mr. Adams to be determined by summary disposition.

4. On April 7, 2014, the Commission entered an Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisors Act of 1940, and Section 9(b) of the Investment Company Act of 1940, and Ordering Continuation of Proceedings against Gregory J. Adams (the "April 7 Order"). In the April 7 Order, the Commission

accepted Mr. Adams' Offer of Settlement, made findings of fact and conclusions of law, and entered a cease-and-desist order and collateral associational bars against Mr. Adams.

5. On approximately September 30, 2014, the Division filed the Division of Enforcement's Motion for Summary Disposition Against Respondent Gregory J. Adams ("Motion for Summary Disposition").[1]

6. Against Mr. Adams, the Division seeks: (1) $1,070,828 of disgorgement fees; (2) $149,031 of prejudgment interest; and (3) a third tier civil penalty of $1,070,828. *See* Motion for Summary Disposition at 6-11.

ARGUMENT

I. Plaintiff Uses a Faulty Methodology to Determine the Amount of Disgorgement to Assess Against Mr. Adams

As noted above, the Division's Motion for Summary Disposition states that Mr. Adams is liable for a disgorgement amount of $1,070,828. This amount represents fees and compensation relating to referral and consulting agreements with entities owned or controlled by Nikolai Simon Battoo ("Battoo"). However, the Division's calculations erroneously omit numerous payments and legitimate expenses that should be deducted from any proceeds in determining a proper disgorgement amount for Mr. Adams.

a. Disgorgement is Limited to Ill-Gotten Gains Only

"Disgorgement merely requires the return of wrongfully obtained profits; it does not result in any actual economic penalty . . ." *See SEC v. Pitters*, No. 09-20957-CIV, 2010 WL 1413194, at *5 (S.D. Fla. Mar. 5, 2010) (quoting *SEC v. Lybrand*, 281

[1] Mr. Adams filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Middle District of Florida on May 15, 2013. The Commission noted in its Motion for Summary Disposition that it has filed a proof of claim in Mr. Adams' bankruptcy case, and that "[t]o the extent the automatic bankruptcy stay remains in effect by the time the Law Judge enters an order against Mr. Adams, any enforcement of monetary relief the Division obtains in these administrative proceedings against Adams or property of Adams' bankruptcy estate will be sought in accordance with the Bankruptcy Code and Federal Rules of Bankruptcy Procedure. *See* Motion for Summary Disposition at 6 n.3.

F.Supp.2d 726, 729-30 (S.D.N.Y.2003)). Disgorgement "is only triggered by a defendant's profit or gain or enrichment, and [] it is not a tool for punishing parties who have not profited from their wrongdoing." *See SEC v. Video Without Boundaries, Inc.*, No. 08–61517–cv, 2010 WL 5790684, at *5 (S.D. Fla. Dec. 8, 2010) (emphasis added); *see also Pitters*, 2010 WL 1413194, at *5; *SEC v. Merchant Capital, LLC*, No. 09-14890, 397 Fed.Appx. 593, 595, 2010 WL 3733878 (11th Cir. Sept. 27, 2010) ("[T]he chief purpose of disgorgement is to deprive the violators of their ill-gotten gains. [Disgorgement is tied to] the idea of unjust enrichment: the broad idea is that persons not profit from breaking the securities laws.").

b. Assessing the Proper Disgorgement Amount

Although exactitude is not a requirement, the measurement of disgorgement must still be reasonable. *See SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004). After a party presents evidence "reasonably approximating the amount of a Defendant's ill-gotten gains, then the burden of proof shifts to the defendant." *See SEC v. U.S. Pension Trust Corp.*, No. 07-22570-CIV, 2010 WL 3894082, at *24 (S.D. Fla. Sept. 30, 2010); *see also SEC v. First City Financial Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989). The defendant must then demonstrate that the disgorgement amount presented by the plaintiff is not a reasonable approximation, clarifying any risk of uncertainty regarding the "exact amount received" by the defendant. *Id.*; *see also SEC v. Lauer*, 445 F.Supp.2d 1362, 1371 n.11 (S.D. Fla. 2006).

The Division significantly overstates Mr. Adams' proper disgorgement amount. The Division is not permitted to omit relevant transactions when calculating its disgorgement amount. Additionally, a party "may not [] rely on conclusory statements

and hypothetical scenarios to prove its point." *See Video Without Boundaries*, 2010 WL 5790684 at *4; *see also SEC v. Miller*, No. Civ.A.1:04CV1655-JEC, 2006 WL 2189697, at *15 (N.D. Ga. July 31, 2006) (granting defendant's motion for summary judgment on disgorgement claim).

The Division bases its disgorgement calculation on a declaration (the "Strandell Declaration") submitted by its staff accountant, Kathleen E. Strandell ("Ms. Strandell"). *See* Motion for Summary Disposition at Exh. A at 2. The Strandell Declaration examined statements pertaining to accounts that Sovereign Asset Management ("Sovereign") maintained at Jyske Bank, and two facsimile transmissions from Private International Wealth Management ("PIWM") to Mr. Adams on June 3, 2010 and August 31, 2010, and concluded that Mr. Adams retained $1,070,828 of ill-gotten proceeds. *Id.* However, there were several outgoing transfers of the proceeds that the Law Judge should deduct from any disgorgement amount she orders against Mr. Adams. For example, Mr. Adams made total payments of $183,322.83 to Larry Grossman ("Mr. Grossman"). *See* Gregory Adams Declaration ("Adams Decl.") at 2 (attached hereto as "Exhibit 1"). A review of the documents that Ms. Strandell relied upon in creating the Strandell Declaration (i.e., the Jyske Bank statements), as well as documents that Mr. Adams previously provided to the Division, reveals numerous subsequent outgoing payments from Sovereign's Whitney and Wachovia Bank accounts to Mr. Grossman. Sovereign's Wachovia and Whitney Bank statements detailing multiple payments from Sovereign to Mr. Grossman is attached to Adams Decl. at Exh. A. Accordingly, the above-referenced $1,070,828 in payments received from Alliance Investment, Folio Administrators, and PIWM, is not

appropriate for disgorgement against Mr. Adams, as he did not retain such amounts in ill-gotten gains.

The disgorgement amount that the Division has advanced for Mr. Adams has also omitted numerous legitimate business expenses that should be deducted before the Law Judge arrives at a proper disgorgement amount for Mr. Adams. In *Video Without Boundaries*, the plaintiff sought the Court's support in finding that "disgorgement amounts should not be reduced by things like business expenses, subsequent use of profits, squandering or resources, transaction costs, brokerage commissions, and other fees." 2010 WL 5790684 at *5. However, the Court rejected the plaintiff's position and instead held that "disgorgement is a tool used to rid a defendant of *total gains*." *Id.* at *5 (emphasis in original); *see also SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005) ("power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing.").

Mr. Adams paid numerous legitimate expenses that should be deducted from any disgorgement amount sought, including office rent, accounting expenses, and federal and state taxes, and payroll expenses. *See* Adams Decl. at 2-4. More specifically, Mr. Adams expended approximately $304,135.84 of legitimate expenses relating to the payments in question in this matter. *Id.* The above-referenced legitimate expenses of Mr. Adams do not constitute a "profit" in the 11th Circuit and should be deducted from any disgorgement amount. The expenses that Mr. Adams incurred were expenses that were customary in the operation of Mr. Adams' business and, as such, were not illegitimate expenses. *See SEC v. JT Wallenbrock & Associates*, 440 F.3d 1109, 1115

(9th Cir. 2006) (refusing to allow defendants credit against disgorgement for "entirely illegitimate expenses incurred to perpetuate an entirely fraudulent operation.").

The Division's request for $1,070,828 in disgorgement against Mr. Adams grossly overstates the correct amount of such disgorgement, and ignores the above-demonstrated (1) $183,322.83 in subsequent outgoing payments to Mr. Grossman, and (2) $304,135.84 of Mr. Adams' legitimate expenses. Accordingly, utilizing the appropriate legal precedents for the issues herein and viewing all documents and declarations before the Law Judge in light of those legal precedents, the Law Judge should set the proper disgorgement amount for Mr. Adams at no more than $583,369.40. Such amount is the amount of ill-gotten gains that Mr. Adams received in this matter, and disgorgement in any higher amount is improper.

II. <u>The Prejudgment Interest Amount is Inaccurate Against Mr. Adams</u>

Prejudgment interest on damages awarded pursuant to a violation of the federal securities laws is a matter a judicial discretion. *See U.S. Pension Trust Corp.*, 2010 WL 3894082 at *24. In exercising its discretionary powers, a court must consider both compensation and fairness. *Id.* In order to calculate prejudgment interest, a court must first establish the judgment amount. *See SEC v. Carillo*, 325 F.3d 1268, 1272 (11th Cir. 2003). The Division's request for $1,070,828 in disgorgement against Mr. Adams grossly overstates the correct amount of such disgorgement, and as such, the accurate judgment amount has not been establish. Accordingly, the Division's prejudgment interest calculation is incorrect. For the aforementioned reasons, the Law Judge should decline to order Mr. Adams to pay $149,031 in prejudgment interest.

III. The Penalty Amount is Inappropriate Against Mr. Adams

In this matter, the Division has requested that the Law Judge impose a third-tier penalty against Mr. Adams in the amount of $1,070,828. For the reasons stated herein, the Law Judge should refrain from imposing a $1,070,828 civil penalty against Mr. Adams, but rather, should impose a substantially lower civil penalty on Mr. Adams.

Courts in the 11th Circuit consider, among other things, the following factors when determining a penalty: (1) the egregiousness of the Defendant's violations; (2) the isolated or repeated nature of the violations; (3) the degree of scienter involved; (4) the deterrent effect of a particular penalty amount, taking into consideration the defendant's financial worth; (5) any other penalties arising from the conduct; and (6) the amount of unjust enrichment. *See SEC v. Chapnick*, No. 90-6793-CIV-PAINE, 1994 WL 113040 (S.D. Fla. Feb. 11, 1994); *SEC v. Ginsburg*, No. 99-8694-CV-RYSKAMP, 2002 WL 1835810 (S.D. Fla. July 8, 2002); *SEC v. Yun*, 148 F.Supp.2d 1287 (M.D. Fla. 2001); *SEC v. One Wall Street, Inc.*, 2008 U.S. Dist. LEXIS 110351, at *21-22 (E.D.N.Y. Sept. 4, 2008).

However, perhaps most important for the Law Judge's consideration is Mr. Adams' financial worth. Mr. Adams filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Middle District of Florida on May 15, 2013. *See* Adams Decl. at 4. Mr. Adams is currently employed part-time at CarMax and earns approximately $1000.00 monthly. *See* Adams Decl. at 4. Consequently, Mr. Adams relies on his wife and family members for financial assistance. *See* Adams Decl. at 4.

It is appropriate for the Law Judge to consider a defendant's financial condition when determining whether to reduce an appropriate penalty. *See Pitters*, 2010 WL

1413194, at *4; *see also SEC v. Pardue*, 367 F.Supp.2d 773, 777 (E.D. Pa. 2005) ("While I agree . . . that [defendant] should fairly and rightfully be expected to pay something in the event he is able, I see no reason to pointlessly impose an order for monetary relief with dubious chances of execution and for no other purpose than further solidifying the financial ruination of the defendant and his innocent family."); *Yun*, 148 F.Supp.2d. at 1297-98 (M.D. Fla. 2001) ("Though this Court notes that, even assuming the most favorable interpretation of the facts elicited at trial, [defendant's] actions establish significant levels of misconduct, this Court will leaven the civil penalty in recognition of [defendant's] financial condition."). Mr. Adams will be financially unable to contribute to a significant financial judgment against him, and the Law Judge should decline to impose a civil penalty in the amount of $1,070,828.

CONCLUSION

The positions advanced by the Division regarding disgorgement, prejudgment interest, and civil penalties demonstrate its desire to punish Mr. Adams in a draconian and disproportional manner. The applicable standard for determining the appropriateness and extent of each penalty grossly contradicts the Division's position. The Law Judge should reject the Division's requests, and rule in a manner consistent with the applicable laws. Any disgorgement ordered against Mr. Adams should not exceed his gains. Further, Mr. Adams should not incur civil penalties in the amount requested by the Division. Moreover, Mr. Adams is currently financially unable to satisfy any possible judgment due to his substantially low income. Mr. Adams' dire financial condition coupled with the relevant facts in this matter privides the Law Judge with adequate grounds to significantly lower his civil penalty in this matter.

WHEREFORE, Respondent Gregory J. Adams respectfully requests that the Law Judge:

(a) set the proper disgorgement amount for Mr. Adams in this matter at no more than $589,369.40;

(b) lower the amount of prejudgment interest in accordance with the proper disgorgement amount of $589,369.40 as requested herein; and

(c) lower the Division's requested $1,070,828 civil penalty.

DATED: October 30, 2014
Coral Gables, Florida

Respectfully submitted,

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EXHIBIT 1

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of LARRY C. GROSSMAN and GREGORY J. ADAMS Respondents.	)	ADMINISTRATIVE PROCEEDING FILE NO. 3-15617

RESPONDENT GREGORY J. ADAMS' DECLARATION IN OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT GREGORY J. ADAMS

In accordance with 28 U.S.C. § 1746, I Gregory J. Adams, declare:

1. I submit this declaration in opposition to the Securities and Exchange Commission Division of Enforcement's (the "Division) Motion for Summary Disposition Against Respondent Gregory J. Adams ("Motion for Summary Disposition").

2. I am 58 years of age and currently reside in Palm Harbor, Florida.

3. In its Motion for Summary Disposition, the Division relies upon the Declaration of Kathleen Strandell ("Strandell Declaration"). The Strandell Declaration acknowledges that the total payments transferred into the Jyske bank account and received from Private International Wealth Management ("PIWM") was $1,070,828. However, the Strandell Declaration fails to acknowledge multiple other payments made from Sovereign International Asset Management, Inc.'s ("Sovereign") operating accounts at Wachovia Bank, Whitney Bank and BB&T Bank to other companies/persons. For example,

Wachovia and Whitney Bank statements (attached hereto as "Exhibit A") show the following payments made from the funds received.

Redacted

See Exhibit A.

4. The Strandell Declaration also fails to calculate many expenses relating to the payments in question in this matter, all of which are also reflected in Sovereign's Whitney Bank statements:

Redacted

Redacted

Redacted

See Exhibit A.

5. Redacted

6. I recently established an independent insurance agency. However, it has produced zero income since its creation.

7. Redacted

9. Red Redacted

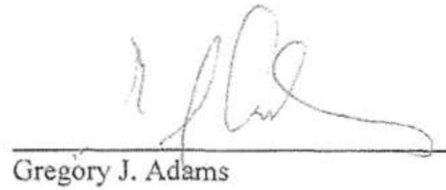
10. Redacted

11. Redacted

12. Redacted

I, Gregory J. Adams, declare under penalty of perjury that the foregoing is true and correct.

DATED: October 30, 2014



Gregory J. Adams

EXHIBIT A

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