UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17716

In the Matter of **ROBERT L. BAKER,** **JACOB B. HERRERA,** **MICHAEL D. BOWEN, and** **TERRENCE A. BALLARD** **Respondents.**	**DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT AND SANCTIONS AGAINST TERRENCE A. BALLARD**

DATED: July 25, 2019

Respectfully submitted,

s/ Jason P. Reinsch

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SECURITIES

The Division of Enforcement (the "Division") moves for an order of default under Rule 155(a) of the SEC's Rules of Practice (17 C.F.R. § 201.155(a)) and for an order imposing remedial sanctions, a cease-and-desist order, disgorgement plus prejudgment interest, and a civil penalty against Respondent Terrence A. Ballard ("Ballard" or "Respondent"). In support of this motion, the Division respectfully shows as follows:

I.
RELEVANT PROCEDURAL HISTORY

A. Ballard has been found in default for failing to answer the allegations in the OIP or otherwise participate in this proceeding.

On December 8, 2016, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940 and Notice of Hearing ("OIP") against Ballard and three other Respondents, Robert L. Baker ("Baker"), Jacob B. Herrera ("Herrera"), and Michael D. Bowen ("Bowen") (collectively the "Other Respondents"). *Robert L. Baker*, Securities Act Rel. No. 10264, 2016 SEC LEXIS 4539, *1 (Dec. 8, 2016). The OIP ordered Ballard and the Other Respondents to file an answer to the OIP's allegations within 20 days of service. *Baker*, 2016 SEC LEXIS 4539, *14. On January 10, 2017, the Division personally served the OIP on Ballard. *Baker*, 2017 SEC LEXIS 286, *1 (ALJ Jan. 27, 2017). Ballard's answer was due on January 30, 2017. *Id.* at *2.

Ballard has failed to file an answer or otherwise participate in this proceeding. *Baker,* AP Rulings Rel. No. 4606, 2017 SEC LEXIS 467, *1 (ALJ Feb. 15, 2017). On February 15, 2017, the previously assigned Administrative Law Judge ("ALJ"), Judge Jason Patil, ordered him "to show cause by February 28, 2017, why he should not be found in default for failing to answer the

OIP." *Id.* By March 3, 2017, Ballard had neither answered the OIP nor shown cause as ordered, and Judge Patil found him in default under Rule 155(a) of the SEC's Rules of Practice. *Baker*, AP Rulings Rel. No. 4652, 2017 SEC LEXIS 659, *1-2 (ALJ Mar. 3, 2017).

Ballard has neither sought to set aside the March 3, 2017 default order nor otherwise challenged it. And the record reflects no order countermanding the previous default order.

B. Ballard has failed to participate in these proceedings.

On November 30, 2017, the Commission ratified the appointment of its ALJs and allowed the submission of new evidence to assist the ALJ in reconsidering the record and determining whether to revise or ratify prior actions. *Baker*, AP Rulings Rel. No. 5657, 2018 SEC LEXIS 784, *2 (ALJ Mar. 23, 2018). Ballard neither submitted new evidence nor otherwise responded to the Commission's November 30, 2017 order.

On February 14, 2018, Judge Patil entered an order ratifying all prior actions as to Ballard, including the "finding that he is in default for failure to participate in the proceeding." *Baker*, AP Rulings Rel. No. 5598, 2018 SEC LEXIS 469, *1-2 (ALJ Feb. 14, 2018). On March 18, 2019, this proceeding was reassigned to this Court. *Baker*, AP Rulings Rel. No. 6503 (ALJ March 18, 2019). Likewise, this Court found that Ballard has "thus far failed to participate in this proceeding at all," a failure for which it noted, "I am prepared to find him in default." *Baker*, AP Rulings Rel. No. 6589, 2019 SEC LEXIS 1257, *2 (May 30, 2019).

C. The Division has made additional efforts to contact and notify Ballard.

Ballard was personally served with the OIP and other documents, and counsel for the Division and its staff have made additional efforts to contact Ballard to advise him of this pending action. Ex. 1 at ¶¶ 15-18. Those efforts have proven unsuccessful.

On June 17, 2019, the Court directed the Division to again attempt to determine Ballard's current address and, if successful, direct a copy of the default motion to that address. *Baker*, AP Rulings Rel. No. 6611, 2019 SEC LEXIS 1257, *2 (June 17, 2019). To that end, on June 21, 2019, counsel for the Division attempted to contact Ballard at all publically-available phone numbers and email addresses. Ex. 2 at ¶¶ 2-8. Notably, a person answering one of the publically available phone numbers claimed to know Ballard, agreed to pass along a message, and provided Division counsel with Ballard's current phone number, which was one of the publically available numbers counsel called. *Id.* at ¶ 4. However, Ballard did not answer a call to that number and has not responded to the detailed voicemail message. *Id.* at ¶¶ 4, 8.

D. The Other Respondents have settled their claims with the Division for the same relief requested against Ballard.

The Other Respondents each consented to the entry of administrative orders, which include all of the relief sought by the Division against them—as well as the same general relief sought against Ballard: (1) a cease-and-desist order; (2) permanent industry, collateral, penny-stock, and investment company bars; (3) a civil penalty of $50,000; and (4) disgorgement of all transaction-based compensation plus prejudgment interest. *See Baker*, AP Rulings Rel. No. 10471, 2018 SEC Lexis 763, *6 (March 22, 2018) (imposing cease-and-desist order, associational bar, investment company prohibition, and $50,000 civil penalty against Baker, Herrera, and Bowen); *Baker*, AP Rulings Rel. No. 10663, *5 (July 24, 2019) (ordering Baker to pay disgorgement of $2,727,016.00 plus prejudgment interest of $422,354.52); AP Rulings Rel. No. 10664, *5 (July 24, 2019) (ordering Bowen to pay disgorgement of $2,378,378.68 plus prejudgment interest of $361,430.56); AP Rulings Rel. No. 10665, *5 (July 24, 2019) (ordering Herrera to pay disgorgement of $1,736,605.66 plus prejudgment interest of $299,407.30).

II.
STATEMENT OF FACTS

A. Summary.

Starting in or around 2011, Christopher A. Faulkner ("Faulkner") orchestrated a multi-pronged scheme that defrauded hundreds of investors across the country out of at least $80 million dollars in connection with the unregistered offer and sale of oil and gas interests (the "Faulkner Scheme"). OIP at ¶¶ 2, 14.[1] In carrying out his scheme, Faulkner relied upon the assistance of numerous individuals, including Ballard. OIP at ¶ 14; *see also* Ex. 3 at ¶ 3.

Ballard and the Other Respondents facilitated the Faulkner Scheme by offering and selling oil and gas interests to thousands of investors across the country, including by cold-calling, providing substantive details about the investments, advising prospective investors on the merits of investing, and receiving transaction-based compensation. OIP at ¶ 2; Ex. 3 at ¶ 3. For his role in the Faulkner Scheme, Ballard received $1,106,228.64[2] in undisclosed transaction-based compensation. Ex. 4 at ¶¶ 6-11; Ex. 4 at Ex. B at 6 ("Units will be offered and sold by officers and employees of the Company, who will not receive transaction based compensation for sales of Units") (emphasis added). Ballard received transaction-based compensation when an investor—that Ballard contacted, solicited, and pitched—actually invested with one of the entities. Ex. 3 at ¶ 4. Ballard was not registered with the Commission as a broker or associated with a registered broker-dealer during this time. Ex. 2 and Ex. B at 3-4; OIP at ¶ 6.

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[1] The Division hereby incorporates the OIP by reference as if fully set forth herein. As discussed in Section III.A. below, pursuant to Rule 155(a) of the Commission's Rules of Practice, the allegations in the OIP may be deemed true where a party, as here, defaults in the action. *See* 17 C.F.R. § 201.155(a).

[2] The OIP alleged that, for the period 2010-2016, Ballard received transaction-based compensation totaling $1,239,284 for his unregistered offer and sale of securities for the period 2010-2016. OIP at ¶ 21. This amount differs from the amount the Division seeks as disgorgement in this Motion for a number of reasons. *See* Martinez Dec. at ¶¶ 7-11 for details.

B. Ballard aggressively sold securities.

Between 2011 and 2016, Ballard worked as a salesperson and recruiter of new investors for Breitling Oil and Gas Corporation ("BOG"), Breitling Royalties Corporation ("BRC"), Crude Energy, LLC ("Crude"), Crude Royalties ("CR"), Patriot Energy, Inc. ("Patriot"), and Patriot Royalties ("PR") (collectively "Offering Entities"), selling oil and gas interests as part of unregistered offerings. Ex. 4 at Ex. C at 10 ("Description of Services: Sales, marketing, recruitment of new customers [. . .]"); Ex. 3 at ¶ 3; Ex. 4 at Ex. D; OIP at ¶ 6. Prior to working as a salesperson for these entities, Ballard held a Series 7 license (CRD#4226733) and was affiliated with several registered broker-dealers between 2000 and 2009. Ex. 2 at Ex. B at 6-7; OIP at ¶ 6.

Even though Faulkner conceived of and orchestrated the Faulkner Scheme, he delegated the offer and sale of the securities to Ballard and others. Between 2011 and 2016, Ballard, the Other Respondents, and other salespersons sold working interests in oil and gas prospects for BOG, Crude, and Patriot (collectively the "Working Interest Entities") and royalty interests in oil and gas prospects for BRC, CR, and PR (collectively the "Royalty Interest Entities"). Ballard was regularly and intimately involved at key points in the chain of distribution for both the Working Interest Entities and Royalty Interest Entities. OIP at ¶ 17.

Ballard and the Other Respondents were the first line of the sales process, cold-calling thousands of prospective investors across the country using lead-list information purchased from a third-party. OIP at ¶ 19; *see also* Ex. 5 at 62:25-63:23 (Ballard called approximately 1,000 potential investors per week). After making initial contact, Ballard continued the sales process by providing substantive details about relevant offerings, including the size of the offering, the location of the proposed wells, and projected performance of the wells and the investment. *See*

OIP at ¶ 19; Ex. 4 at Ex. E (Ballard identifying specific investment opportunities by well name and cost); Ex. 4 and Ex. F at 22:23-23:2 (Ballard identifying a particular investment unit cost at $150,000 per unit producing $1,600 per month in revenue.). Ballard also enticed investors by describing the quality of the specific opportunity. For example, during one call, Ballard described the investment opportunity as follows:

> [Y]ou're getting a good deal. This is more of an industry deal. [. . .] these wells are brand new. They've settled, but they're going to produce for a long time. There is [*sic*] two wells currently. There is [*sic*] two more being added. And then, there's [*sic*] eight more that's [*sic*] permitted.

Ex. 4 and Ex. F at 23:15-21.

In calls and emails, Ballard also made claims of substantial returns on the investment. For example, Ballard represented to one potential investor that:

> [O]n a drilling investment, you can make anywhere from twenty to thirty-percent annually. Royalty investments vary anywhere from twelve to thirty percent. [. . .] there's actually no limit to how high it can go.

Ex. 4 and Ex. G at 4:16-23[3]; *see also* Ex. 4 at Ex. H ("put you in line to see revenue of 12k a month"). Ballard also advised potential investors about the alleged tax advantages of investing with the Working Interest Entities. *See, e.g.,* Ex. 4 and Ex. I ("You can deduct up to 86% of your investment against ordinary income or capital gains in the first year on a good well."); Ex. 4 at Ex.G at 4:1-4 ("So, you can actually turn a tax liability into a producing asset for you [. . .] And still take the tax deduction.").

Additionally, Ballard maintained and attempted to nurture relationships with investors by

[3] At the close of Mr. L.'s inquiry into investments, Ballard stated, "[t]hank you for wasting my time" presumably due to Mr. L.'s unwillingness to invest at that time. Mr. L. Trans. at 9:4.

offering new investment opportunities. *See, e.g.*, Ex. 4 at Ex. K (discussing status of distributions for the existing investment in the "Babylon" project and a new investment in the "White Wolf" prospect); Ex. 4 at Ex. J (Ballard referencing his prior efforts to convince investor to purchase additional 2% interest).

C. Investors solicited and sold by Ballard suffered significant losses.

Investors in the Faulkner Scheme, including those pitched by Ballard, suffered massive losses. Because the records that the Offering Entities maintained (and produced during the underlying investigation) were shoddy, and because Ballard refused to participate in this proceeding, the Division is unable to precisely quantify the exact amount of investor losses directly attributable to Ballard's conduct. However, the available evidence demonstrates Ballard's significant role in the massive scheme.

First, as sworn by Parker Hallam—BOG's co-founder and COO—Ballard received commissions of 6-10% of the total amount invested by an investor that Ballard recruited. Ex. 6 at ¶ 11. Thus, the more than $1.1 million in commissions that Ballard received equates to between $11 million and $18.4 million of actual investor funds pumped into the Faulkner Scheme.[4]

Second, the Division reviewed thousands of transactions and investor repayment records along with information provided by various investors, and these records demonstrate that Ballard's conduct directly caused significant investor harm. For example, in looking at a subset of five investors that Ballard solicited, these investors collectively invested more than $2.1 million. Ex. 4 at ¶¶15-23; Ex. 9 at ¶¶5-6.[5] Yet, these investors received less than $136,000 back, thereby losing

[4] $1.1 million is 6% of approximately $18.4 million and 10% of approximately $11 million.

[5] As detailed in the Martinez Declaration and documents attached thereto, these investors actually invested in various prospects offered by the Working Interest Entities and/or Royalty Interest Entities. Additionally, based on

more than *93%* of their initial investment. Ex. 4 at ¶¶22-23.

D. Ballard received more than $1.1 million in transaction-based compensation during the relevant five-year period.

While his investors lost most of their investments, Ballard received more than $1.1 million by virtue of his participation in the Faulkner Scheme. *See* Ex. 4 at ¶¶ 6-11. Ballard's total compensation was comprised of (1) a fixed salary of $800 payable every two weeks, and (2) transaction-based compensation, his primary source of income. Ex. 3 at ¶ 4; OIP at ¶ 20; *see also* Ex. 6 at ¶ 11; Ex. 7 at ¶ 18; Ex. 8 at ¶ 9.

After selling a working interest or a royalty interest, Ballard received a percentage of every dollar ultimately invested—typically 6% to 10% of the total amount invested by the investors. *See* Ex. 6 at ¶ 11; OIP at ¶ 21. Ballard received these commission payments through companies he owned and controlled. Ex. 4 at ¶ 10; Ex. 5 at 41:16-21; OIP at ¶ 21; *see also* Ex. 4 at Ex. L; Ex. 4 at Ex. M.

In total, Ballard received transaction-based compensation totaling $1,106,228.64 for his unregistered offer and sale of securities. Ex. 4 at ¶¶ 6-11.

E. Neither Ballard nor the securities he sold were registered.

Although Ballard previously served as a registered representative, he was not registered as a broker or associated with a registered broker-dealer while selling securities on behalf of the Working Interest and Royalty Interest Entities. Ex. 2 at Ex. B at 5-6; OIP at ¶¶ 6, 22.

Moreover, for each of the offerings of securities sold by Ballard for the Working Interest and Royalty Interest Entities, no registration statement was in effect or filed with the Commission.

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information learned during the course of the Division's investigation, including witness interviews and the staff's review of thousands of transactions and documents, Ballard provided these investors with substantive details on the various investments.

Exs. 10-12; OIP at ¶ 23.

III.
ARGUMENT AND AUTHORITIES

A. The Court should find Ballard in default, deeming the OIP's allegations as true.

Rule 155(a) of the Rules of Practice provides that the Court may deem a party in default if that party fails "to answer . . . or otherwise to defend the proceeding." 17 C.F.R. § 201.155(a). After being personally served with the OIP, Ballard has failed to answer and/or to otherwise defend this proceeding. Moreover, the Division made extensive efforts to notify Ballard of this pending matter and the Division's intention to move for a default judgment. *See, e.g.,* Ex. 1 at ¶¶ 16-18; Ex. 2 at ¶¶ 2-8. Therefore, the Court should find Ballard in default.

Rule 155(a) also provides that, when a party has been deemed in default, "the hearing officer may determine the proceeding against that party upon consideration of the record, including the [OIP], the allegations of which may be deemed to be true." 17 C.F.R. § 201.155(a). Thus, the Court should deem the allegations against Ballard in OIP to be true.

B. Ballard violated the federal securities laws.

1. Ballard willfully violated Section 15(a) of the Exchange Act

Exchange Act Section 15(a) prohibits a broker or dealer from making use of the mails or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission, is an associated person of a registered broker-dealer, or satisfies the conditions of an exemption or safe harbor. 15 U.S.C. §78o(a). "Scienter is not required for a violation of Exchange Act Section 15(a)." *Larry C. Grossman*, S.E.C. Rel. No. 727, 110 S.E.C. Docket 2987, *25 (Dec. 23, 2014).

Exchange Act Section 3(a)(4) defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). In determining whether Ballard served as a broker, the Court should consider whether he received commissions, made valuations as to the merits of the investment or gave advice, and actively found investors. 15 U.S.C. § 78c(a)(4); *Grossman*, S.E.C. Rel. No. 727, 110 S.E.C. Docket at *25 (citing *SEC v. Zubkis*, No. 97 Civ. 8086, 2000 WL 218393, at *28 (S.D.N.Y. Feb. 23, 2000)).

Based on the evidence in the record, Ballard acted as an unregistered broker pursuant to Section 15(a) of the Exchange Act. First, he received more than $1,106,228.64 in transaction-based compensation. Ex. 4 at ¶¶ 6-11; *see also* Ex. 3 at ¶¶ 3-4. Courts perceive the receipt of transaction-based compensation to be a hallmark of broker-dealer activity. *See Cornhusker Energy Lexington, LLC v. Prospect St. Ventures*, 2006 U.S. Dist. LEXIs 68959, *6, 20 (D. Neb. Sep. 12, 2006); *SEC v. Gagnon*, 2012 WL 994892, *11 (E.D. Mich. Mar. 22, 2012). Ballard also advised prospective investors on the merits of the various investments, including pitching investors on the purported lucrative returns they would likely earn from investing. *See* Section II.B above for details. And Ballard actively solicited investors by making thousands of cold calls per week. Ex. 5 at 62:25-63:23. Ballard was not registered with the Commission as a broker or dealer, nor was he associated with a registered broker dealer from 2011 to 2016. Ex. 2 at Ex. B at 6. Therefore, Ballard willfully violated Section 15(a) of the Exchange Act.[6]

[6] "Willfully," for purposes of imposing relief under Exchange Act Section 15(b)(6) and Investment Company Act Section 9(b), "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

2. Ballard Violated Sections 5(a) and 5(c) of the Securities Act

Sections 5(a) and 5(c) of the Securities Act prohibit "any person" from directly or indirectly using the mails or the means of interstate commerce to offer or sell a security unless it is registered with the SEC or is exempt from registration. 15 U.S.C. §§ 77e(a), (c). Liability arises when a principal in the sale of an unregistered security is either an issuer, an underwriter, or a necessary participant. *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 859 (S.D.N.Y. 1997). Scienter is not required to establish violations of subsections (a) and (c). *Id.* at 859-60. If a registration exemption is claimed, the claimant bears the burden of proving the exemption. *Id.* at 859 (citing *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126, 73 S.Ct. 981, 985, 97 L.Ed. 1494 (1953)). The interstate commerce "prerequisite of a Section 5 violation is broadly construed to include tangential mailings or intrastate telephone calls." *Id.* at 861.

Ballard offered and sold working interests and royalty interests in connection with unregistered securities offerings. OIP at ¶ 17, 23; Attestations. He did so using interstate commerce, as noted above. *See, e.g.*, Ex. 5 at 62:25-63:23 (Ballard called approximately 1,000 potential investors per week). Lastly, having defaulted, Ballard has not met his burden to show that "any exemption to registration applies." Therefore, he violated Securities Act Sections 5(a) and 5(c).

C. Ballard's violations warrant sanctions and other relief.

Based on Ballard's conduct discussed above, the Court should order relief against Ballard that includes: (1) a cease-and-desist order from future violations of Exchange Act Section 15(a) and Securities Act Sections 5(a) and 5(c); (2) disgorgement of his ill-gotten gains (commissions) plus prejudgment interest thereon; (3) civil penalties; and (4) permanent industry, collateral, and

penny-stock bars, and investment company prohibitions.

1. Cease-and-Desist Order

Securities Act Section 8A and Exchange Act Section 21C authorize the Commission to issue a cease-and-desist order against any person who has violated the Securities Act or Exchange Act or any rule or regulation thereunder. 15 U.S.C. §§ 77h-1(a), 78u3(a). Thus, the Court should order Ballard to cease and desist from future violations of Exchange Act Section 15(a) and Securities Act Sections 5(a) and 5(c).

In imposing a cease-and-desist order, the Commission considers the factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), which include: (1) the egregiousness of a respondent's actions; (2) the degree of scienter involved; (3) the isolated or recurrent nature of the infraction; (4) the recognition of the wrongful nature of the conduct; (5) the sincerity of any assurances against future violations; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *Id.* No single factor is dispositive. *Id.* In addition, there should be some likelihood of future violations, but that showing is significantly less than what is required for an injunction. *Larry C. Grossman*, Release No. 727, 110 S.E.C. Docket 2987, *47 (Dec. 23, 2014) (citing *KPMG Peat Marwick, LLP*, 2001 SEC LEXIS 98, at *101, 114, 116 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002)).

a. *The Egregiousness of Ballard's Actions*

Ballard's conduct was egregious. As someone who previously served as a registered representative, worked in a regulated industry for a number of years, and held a Series 7 license, Ballard knew or was reckless in not knowing that: (1) individuals who participate in the offer and sale of securities need to register with the Commission; and (2) the securities he was offering and

selling needed to be registered with the Commission. Ex. 2 at Ex. B at 6. Yet, Ballard violated the securities laws by acting as an unregistered broker (*see id.* at 5-6) and selling unregistered securities (*see* Exs. 10-12). As a direct result of this conduct, Ballard received $1,106,228.64, and investors suffered substantial losses. Ex. 4 at ¶¶ 7-23. These facts are undeniable.

Furthermore, the Court should consider Ballard's violations in the context of the entire Faulkner Scheme. Ballard was a key conduit for a scheme that defrauded hundreds of investors across the country out of at least $80 million dollars. OIP at ¶¶ 2, 17. Ballard not only cold-called investors across the country and lured them with promises of lucrative returns, but he also continued to pitch existing investors on new investment opportunities. *See* Section II.B., above. While Ballard's refusal to participate in this action and the Offering Entities' shoddy documentation makes it difficult to ascertain exactly how many investors Ballard recruited and how much those investors lost, the facts available allow for a close approximation of the harm Ballard caused. As detailed in Section II.C., above, Ballard likely caused investors in the Faulkner Scheme to invest between $11 million and $18.4 million. *See* Ex. 6 at ¶ 11.[7]

Ballard also contemporaneously lied to the Division staff under oath about the particulars of his job. Ballard repeatedly claimed during sworn testimony that his job was largely limited to determining investor accreditation status. Ex. 5 at 12:13-13:25. As detailed in Section II.B, above, and in materials included in the Appendix to the Division's motion, this is demonstrably false.

Furthermore, Ballard testified that the only time he spoke with existing investors when they called him with questions about their accounts.

> Q: So the only time you spoke to people after they had invested in Breitling Oil and Gas Corporation is when they were asking sort of administrative questions like that?

[7] $1.1 million is 6% of approximately $18.4 million and 10% of approximately $11 million.

A: Yeah. Account -- account questions or administrative stuff.

Q: You didn't follow up with people who had invested in Breitling Oil and Gas in a particular prospect to see if they wanted to invest in another prospect?

A: No. If -- the only -- the only time that I would call somebody specifically or -- is if Parker or Michael Miller said, Hey, call this guy and schedule an appointment with them. If they told me to do that.

Id. at 17:22-18:10.

The documents tell a very different story. Rather, Ballard contacted existing investors to advise them that he was holding new investment opportunities for specific existing investors. *See, e.g.,* Ex. 4 at Ex. H. With regard to Mr. P., Ballard also represented the projected return on that potential new investment. *Id.* ("put you in line to see revenue of 12k a month"); Ex. 4 at Ex. K (discussing status of distributions for the existing investment in the "Babylon" project and a new investment in the "White Wolf" prospect); Ex. 4 at Ex. J (Ballard referencing his prior efforts to convince investor to purchase additional 2% interest).

Ballard also absurdly claimed that he received more than $1.1 million in bonuses for "doing a good job [. . .] for coming in, being punctual, you know, not calling in sick or – you know, being here on time, being professional, things like that." Ex. 5 at 31:6-12. In light of the evidence in the record, this is simply ridiculous.

Accordingly, Ballard's conduct was egregious.

b. *The Degree of Scienter Involved*

For several years, Ballard violated Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act as part of an $80-million offering fraud orchestrated by Chris Faulkner.

OIP at ¶ 1. The Division need not prove scienter to establish violations of Securities Act Sections 5(a) and 5(c) or Exchange Act Section 15(a), which resulted from Ballard's misconduct. *See SEC v. Rabinovich & Assocs., LP*, 2008 U.S. Dist. LEXIS 93595, at *14 (S.D.N.Y. 2008). Nonetheless, given the extensive offering period, the numerous investors, and the offerings' lack of registration, the facts reveal that Ballard knew or was reckless in not knowing that he was engaged in wrongdoing.

Moreover, as discussed, Ballard was previously a licensed broker. *See* Ex. 2 at Ex. B at 6. Given his experience in the industry, he was at least reckless in not knowing that the incredible returns on investment he pitched to prospective investors were false and misleading, and he should have known that his claims needed to be carefully vetted. This is almost certainly why Ballard flagrantly lied under oath about what exactly he did to earn his lucrative pay. Accordingly, this factor also weighs in favor of ordering severe sanctions.

c. *The Isolated or Recurrent Nature of the Infraction*

Ballard's infractions were recurrent. Ballard testified that he called thousands of investors every week during his time with Breitling, which spanned at least five years. Ballard Testimony at 63:20-23. Furthermore, based on our review of tens of thousands of bank transactions, Ballard received more than 213 payments during the relevant period to entities he controlled. Martinez Dec. at ¶¶ 9. Given that (a) Ballard testified he didn't receive compensation other than his $800-bi-weekly salary or "bonuses" (Ex. 5 at 28:2-16) and (b) the person in charge of paying Ballard confirmed that Ballard's "bonuses" received were tied to transaction-based compensation (Ex. 6 at ¶ 11), there is little question his conduct was recurrent. Accordingly, this factor strongly supports a disgorgement order.

d. *The Recognition of the Wrongful Nature of the Conduct*

Ballard's lack of recognition of the wrongful nature of the conduct also weighs in favor of a cease-and-desist order. As a threshold, in comparison to the Other Respondents in this matter who performed similar sales duties as Ballard, Ballard has rebuffed the Division staff's numerous attempts to get him to participate in this proceeding. While the Other Respondents agreed to settlements that have included cease-and-desist orders, industry bars, civil penalties, and millions of dollars in disgorgement, Ballard has simply ignored the proceeding altogether.

However, Ballard did provide testimony during the Division's investigation that preceded the institution of this proceeding. And as discussed in Section III.C.(1)(a), above, the testimony Ballard provided was false and misleading in an apparent attempt to avoid responsibility for his actions. Ballard's misleading (at best) testimony evidences that he does not recognize the wrongful nature of his conduct, and this consideration weighs heavily in favor of sever sanctions.

e. *The Sincerity of Any Assurances against Future Violations*

The record reflects no explicit assurances against future violations, but as discussed above, Ballard had the opportunity to provide honest, sworn testimony during the Division's initial investigation into the Faulkner Scheme—and he chose to provide false and misleading testimony. Similarly, Ballard has not provided any assurances that he would no longer engage in this conduct. Furthermore, Ballard is only 44 years old, meaning he has ample time to continue serving as a salesperson.

f. *The Likelihood that the Respondent's Occupation Will Present Opportunities for Future Violations*

At best, this factor is neutral, because Ballard's failure to participate in this proceeding precludes the Division from determining or presenting evidence as to whether Ballard's occupation

presents opportunities for future violations. However, prior to his work with the Offering Entities, Ballard earned his Series 7 license and worked for a broker-dealer. Ex. 2 at Ex. B at 7. This is at least some indication of his proclivity to work in the securities industry.

On balance, the *Steadman* factors weigh strongly in favor a cease-and-desist order.

2. Disgorgement Plus Prejudgment Interest

Exchange Act Sections 21B(e) and 21C(e) and Securities Act Section 8A(e) authorize disgorgement here. *See* 15 U.S.C. §§ 77h-1(e), 78u-2(e), and 78u-3(e). "The primary purpose of disgorgement as a remedy for violation of the securities laws is to deprive violators of their ill-gotten gains, thereby effectuating the deterrence objectives of these laws." *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996), *cert. denied*, 522 U.S. 812 (1997) (citations omitted); *see also Kenneth C. Meissner*, 2015 WL 4624707, at 12 (Aug. 4, 2015). Further, "effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable." *First Jersey Sec.*, 101 F.3d at 1474. The amount to be disgorged "need only be a reasonable approximation of profits causally connected to the violation," and "the risk of uncertainty" in computing disgorgement "should fall on the wrongdoer whose illegal conduct created that uncertainty."[8] *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989); *see also SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998), *cert. denied*, 525 U.S. 1121 (1999). The standard for disgorgement is but-for causation between violations and profits, and disgorgement is always in the public interest. *See Kenneth C. Meissner*, 2015 WL 4624707, at 12 (Aug. 4, 2015). Accordingly, the Court should order Ballard to disgorge all ill-gotten gains—$1,106,228.64 in the form of transaction-based compensation—earned through the

[8] A disgorgement award is appropriate even in the absence of fraud. *See, e.g., SEC v. Parkersburg Wireless LLC*, 991 F. Supp. 6, 9-10 (D.D.C. 1997); *SEC v. Schooler*, 106 F. Supp.3d 1157, 1169 (S.D. Cal. 2015).

unlawful sales of oil-and-gas interests in the five-year period preceding the institution of this proceeding on December 8, 2016. Ex. 4 at ¶¶ 6-11.

Additionally, the Court should order Ballard to pay prejudgment interest on the disgorgement amount. Rule 600(a) of the Commission's Rules of Practice provides that prejudgment interest "shall be due on any sum required to be paid pursuant to an order of disgorgement." 17 C.F.R. § 201.600(a). The IRS underpayment of federal income tax rate, as set forth in 26 U.S.C. § 6621(a)(2), is the appropriate rate for calculating prejudgment interest in SEC enforcement actions such as this one. 17 C.F.R. § 201. 600(b). That rate "reflects what it would have cost to borrow the money from the government and therefore reasonably approximate one of the benefits that the defendant derived from its fraud." *First Jersey Sec., Inc.*, 101 F.3d at 1476.

Based on a disgorgement amount of $1,106,228.64, the application of the tax underpayment rate from December 8, 2016 (the date of the filing of the OIP) through July 25, 2019 (the date of this motion) results in total prejudgment interest of $136,790.92. *See* Ex. 4 at ¶12 and Ex. A

3. Civil Monetary Penalties

Section 8A(g) of the Securities Act and Sections 21B(a) and 21C(a) of the Exchange Act authorize the Commission to impose civil penalties where the Commission finds that: (1) a person has violated, or caused the violation of, any provision of the Acts or the rules or regulations issued thereunder, and (2) such penalty is in the public interest. 15 U.S.C. §§ 77h-1(g) and 78u-2(a). As detailed above, Ballard has violated Securities Act Sections 5(a) and 5(c) and Exchange Act Section 15(a). Additionally, a penalty against Ballard is in the public interest.

"To determine whether a penalty is in the public interest, the statutes call for consideration

of: (1) whether the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm caused to others; (3) unjust enrichment, taking into account any restitution made; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require." *Larry C. Grossman*, 2014 WL 7330327, *42 (Dec. 23, 2014) (citing 15 U.S.C. § 78u-2(c)).

Here, the factors weigh strongly in favor of civil penalties. First, Ballard's violations involved, at the very least, deliberate or reckless disregard of regulatory requirements. Ballard previously held a Series 7 license and worked in the securities industry for years, so he knew or was reckless in not knowing that the securities he sold were not registered and that he needed to be registered (or associated with a registered broker or dealer) to sell those securities. Second, Ballard's actions directly caused significant harm to an indeterminable number of investors. Third, Ballard received more than $1.1 million in transaction-based compensation as a direct result of his violations. This was money he would not have received but-for his violative conduct. Fourth, despite being personally served with the OIP, Ballard wholly failed to answer the allegations in the OIP (or otherwise participate in these proceedings.) A civil penalty is necessary to deter such conduct in the future, particularly where, as here, the Other Respondents appeared and participated in these proceedings. And, towards that end, orders have been entered in this proceeding against the Other Respondents, imposing all of the same relief as the Division seeks against Ballard. Justice requires that Ballard be held accountable for his conduct, just as the Other Respondents in this proceeding have been. Similarly, "not imposing any penalty would not serve the interests of justice." *Larry C. Grossman*, 2014 WL 7330327, * 42 (Dec. 23, 2014).

The Securities Act and the Exchange Act both set out the same three-tiered system for

determining the maximum civil penalty for *each* act or omission, the amounts in each tier differ for "natural persons" and "other persons" (or entities), and the original statutory amounts are periodically adjusted for inflation as required by law. *See* 15 U.S.C. §§ 77h-1(g)(2) and 78u-2(b); 17 C.F.R. § 201.1001(a). In this case, third-tier penalties are appropriate because Ballard's violations: (1) involved deliberate or reckless disregard of regulatory requirements (securities and broker registration provisions), (2) directly resulted in substantial losses to investors in the oil-and-gas offerings, and (3) caused a substantial pecuniary gain to Ballard.

The maximum amount of a third-tier penalty for *each violation* is: (a) $150,000 for each violation committed from March 4, 2009 through March 5, 2013; (b) $160,000 for each violation committed from March 6, 2013 through November 2, 2015; and (c) $173,437 for each violation committed from November 3, 2015 to present. The record reflects that Ballard committed violations of Securities Act Sections 5(a) and 5(c) and Exchange Act Section 15(a) during each of these timeframes. Additionally, each time Ballard offered and sold unregistered securities to prospective investors, he committed at least three violations of the securities laws. As discussed above, due to the shoddy recordkeeping by fraudsters and Ballard's refusal to participate in this proceeding, the Division cannot precisely identify the total number of investors for whom Ballard received transaction-based compensation. However, as detailed in Section II.C above, he likely raised between $11 million and $18.4 million from investors in this scheme.

Further, the Division has identified a subset of five investors who specifically invested (and lost substantial money) because of Ballard's securities-law violations. *See* Ex. 4 at ¶¶ 14-23; Ex. 9 at ¶¶ 5-6. Thus, the Division requests that the Court, at the very least, impose maximum civil penalties for each of the three violations (Sections 5(a), 5(c), and 15(a)) that Ballard committed

when each of these five investors invested—a total of at least 15 violations.

4. Industry, Collateral, and Penny Stock Bars and Investment Company Prohibition

Pursuant to Exchange Act Section 15(b)(6), the Commission may bar any person "from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock." 15 U.S.C. § 78o(b)(6). Similarly, Investment Company Act Section 9(b) authorizes the Commission to prohibit "any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter," if such person has willfully violated any provision of the Securities Act or the Exchange Act. 15 U.S.C. § 80a-9(b). The Court should bar Ballard, because: (1) he willfully violated Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act, as discussed above; and (2) imposing a bar is in the public interest. *See* 15 U.S.C. 78o(b)(6)(A)(i).

In determining whether sanctions are in the public interest, the Commission considers the *Steadman* factors. As detailed in Section III.C.(1) above, Ballard's conduct satisfies each of the *Steadman* factors. The Court should, therefore, (a) bar Ballard from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; (b) bar him participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; and (c) prohibit him

from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

IV.
CONCLUSION

Based on the foregoing, the Division respectfully requests that the Court enter a decision against Ballard that:

a. deems Ballard in default;

b. orders Ballard to cease and desist from violating Section 15(a) of the Exchange Act and Sections 5(a) and 5(c) of the Securities Act;

c. orders Ballard to pay disgorgement in the amount of $1,106,228.64 plus prejudgment interest in the amount of $136,790.92;

d. bars Ballard from: (1) association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and (2) participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;

e. prohibits him from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

f. imposes third-tier civil penalties in an amount to be determined by the Court; and

g. orders any just and equitable relief to which the Division shows itself entitled.

CERTIFICATION OF RULE 154(c) COMPLIANCE

I hereby certify that the forgoing *Motion for Default and Sanctions against Terrence A. Ballard* complies with the length limitations set forth in Rule 154(c) of the SEC's Rules of Practice. The forgoing motion includes 6,881 words, exclusive of the Table of Contents, Table of Authorities, and this certification.

s/ Jason P. Reinsch
Jason P. Reinsch

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17716

In the Matter of

ROBERT L. BAKER,
JACOB B. HERRERA,
MICHAEL D. BOWEN, and
TERRENCE A. BALLARD

Respondents.

APPENDIX IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT AND SANCTIONS AGAINST TERRENCE A. BALLARD

DATED: July 25, 2019

Respectfully submitted,

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