UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT
100 F. Street, N.E.
WASHINGTON, D.C. 20549-5985

John D. Worland, Jr.
Direct Dial Number
(202) 551-4438
E-mail: worlandj@sec.gov

September 6, 2017

Judge Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F. Street NE
Washington D.C. 20549
e-mail: ALJ@SEC.GOV

Re: In re Angel Oak Capital Partners et al. File No. 3-17849

Dear Judge Patil:

On behalf of the Division of Enforcement, I write to call to the Court's attention a recent decision from the United States District Court of the Eastern District of Washington, *SEC v. Hooper*, No. 2:16-mc-0002-MKD (ECF Nos. 03, 05) (attached). This decision concerned a request by the SEC to enforce a Commission Order against one Michael Hooper for, among other things, disgorgement of ill-gotten gains. Hooper asserted that *Kokesh* prohibited the Commission from collecting disgorgement in his case. As the Division of Enforcement did in the present case before Your Honor, the Commission in *Hooper* recalculated the amount of disgorgement it sought to reflect the effect of *Kokesh*, and limited its request to amounts of ill-gotten gains that the Respondent had received within the five-year period of 28 U.S.C. § 2462. (*See* pages 10-11 of the attached decision.)

As in the present case before Your Honor, the Respondent in *Hooper* argued that the statute of limitations began to run from the date of the first violation, and that a failure to bring a case within five years of that date precluded claims for any violation subsequent to that date. The District Court in *Hooper* squarely rejected this notion. In doing so, it cited to a case relied upon by the Division of Enforcement in the present case, *Petrella v. Metro-Goldwyn-Mayer, Inc.* 134 S.Ct. 1962, 1969 (2014), and noted that "[n]othing in § 2462 prevents the Commission from bringing a motion before the Court to address conduct occurring within the applicable statute of limitation period because § 2462 applies to claims rather than actions." Accordingly, the District Court held that the SEC was requesting disgorgement only for "claims" that arose within

the appropriate statutory period, and that such claims were not time-barred. This is exactly what the Division seeks in the present case.

Respectfully submitted,

John D. Worland, Jr.

Cc: All Counsel of Record by e-mail

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

SECURITIES AND EXCHANGE COMMISSION, Applicant, vs. MICHAEL J. HOOPER, Respondent.	No. 2:16-mc-00022-MKD ORDER GRANTING APPLICANT'S MOTION FOR ENFORCEMENT OF ADMINISTRATIVE ORDER **ECF Nos. 03, 05**

Before the Court is the Securities and Exchange Commission's motion to seek enforcement of a Final Order against Respondent Michael J. Hooper pursuant to Section 20(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77t(c), and Section 21(e)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78(e)(1). This Court has jurisdiction pursuant to Section 20(c)

of the Securities Act and Section 21(e) of the Exchange Act. The parties consented to proceed before a magistrate judge. ECF No. 20. The Court, having reviewed the parties' briefing, supplemental briefing, and the record, and having heard oral argument, is fully informed. For the reasons discussed below, the Court grants the Commission's Motion for Enforcement of Administrative Order.

BACKGROUND

In 1997, the Commission filed a complaint in *SEC v. United Fire Technology, Inc., et al.* that alleged Hooper violated antifraud provisions of the federal securities laws, namely Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), Section 10 b of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5. ECF No. 5 at 1; ECF No. 2-4, Ex. 4. The complaint alleged that Hooper prepared financial statements that contained materially false and misleading statements and omissions in violation of security laws. ECF No. 5 at 3. On August 30, 1999, the District Court for the Western District of Washington entered a final judgment against Hooper. *Id.*

On November 19, 1999, the Commission entered an order ("1999 Agreement") against Hooper in an administrative proceeding instituted pursuant to Rule 102(e)(3) of the Commission's Rules of Practice, 17 C.F.R. § 201.102(e)(3). *See* ECF No. 2-7. The 1999 Agreement prohibited Hooper from appearing or

practicing before the Commission as an accountant for five years. *Id.* at 3. It provided that after five years, Hooper could apply for reinstatement to appear or practice before the Commission as "a preparer or reviewer, or as a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission[.]" *Id.* at 3-4. Hooper never applied for reinstatement. ECF No. 2-2, Ex. 2 at 8.

In 2015, Hooper was deposed as part of the Commission's investigation *in the Matter of Terrence J. Dunne, CPA.* ECF No. 2-2, Ex. 2. At his deposition, he testified to accounting and bookkeeping services that he provided for certain publicly traded companies, which testimony is summarized below. *See id.*

A. SpectrumDNA

Hooper prepared financial statements for SpectrumDNA, which were submitted to the public company's auditor and filed with the Commission on two Form 10-Qs. *Id.* at 42-44, 58-59. As part of his work for SpectrumDNA, Hooper made adjustments to the company's accounting records, including reclassifying accounting entries. *Id.* at 42-44. Hooper's reclassifications were reflected in SpectrumDNA's financial statements for the quarter ending September 30, 2011. *Id.* at 127-29. Hooper testified that he performed the reclassifications as directed by SpectrumDNA's auditor, which involved adjusting the company's financial statements to reflect that certain operations had been discontinued. *Id.* at 128-29.

The adjusted financial statements were included in the Form 10-Q. ECF No. 2-10, Ex. 10.

B. Gold Crest Mines, Inc.

Hooper testified that he provided accounting services to Gold Crest Mines, Inc., but he denied that the work "had anything to do with an SEC filing." ECF No. 2-2, Ex. 2 at 49. On April 6, 2014, Hooper answered an email from Gold Crest's auditor, Jeffrey Maichel, and provided an income-tax footnote and supporting schedules to him. *Id.* at 55-56; ECF No. 2-15, Ex. 15. Just four days after Hooper's email, Gold Crest filed its Form 10-K for 2013. *Id.* The form included the company's financial statements audited by Mr. Maichel's firm. *Id.* Note 9 to these financial statements contains figures markedly similar to the income-tax footnote that Hooper provided to the auditor days earlier. *Id.* Hooper also conducted accounting research and provided advice to Gold Crest about reporting and disclosure requirements under the Exchange Act. *Id.*

C. Silver Butte Co.

Hooper served as an accountant for a publicly traded shell company, Silver Butte Co., during a reverse acquisition with a company called Gulfmark Energy Group, Inc. ECF No. 2-2, Ex. 2 at 66-67. Hooper testified that Gulfmark's primary accounting work was performed by the wife of Gulfmark's owner, whom he believed was not trained in bookkeeping. *Id.* at 78-79. According to Hooper,

Gulfmark's accounting records contained misclassified transactions and required adjustments so that they could be used to create financial statements that could be filed with the Commission. *Id.* at 78-80. Hooper reclassified the entries in the records. *Id.* at 78. From these accounting records, he created financial statements. *Id.* at 80, 85. These financial statements were provided to the company's auditor and were then filed with the Commission on at least two Form 10-Qs. *Id.* at 880-83, 136.

D. QE Brushes

Hooper also provided accounting services to QE Brushes, a publicly traded company. ECF No. 2-2, Ex. 2 at 111-12. Hooper testified that he kept the company's primary accounting books and records, which consisted of a check register and an equity schedule. *Id.* at 111-13. From these records, Hooper generated QE Brushes' financial statements, which he provided for inclusion in the company's filings with the Commission on Forms 10-Q and 10-K. *Id.* at 111-13, 116. When Hooper prepared the financial statements, he knew they would be filed with the Commission. *Id.* at 116.

E. Koko, Ltd.

Hooper also provided accounting and financial-statement preparation services to Koko, Ltd., another publicly traded company. ECF No. 2-2, Ex. 2 at 118. Hooper maintained the primary accounting books and records using data

provided by the company's president. *Id.* at 116-19. From this data, Hooper prepared Koko's financial statements for inclusion in the company's filings with the Commission on Forms 10-Q and 10-K. *Id.* at 118. Hooper helped draft notes on Koko's financial statements by providing quantitative information that was included in the notes. *Id.* at 138. When Hooper prepared Koko's financial statements, he did so with the understanding that they would be filed with the Commission. *Id.* at 118.

F. Daybreak Oil and Gas, Inc.

Hooper provided accounting services for Daybreak Oil and Gas, Inc. ECF No. 2-2, Ex. 2 at 59-60. For Daybreak, Hooper created a chart of accounts and a spreadsheet of oil and gas properties. *Id.* at 63-65, 67-68. The information Hooper compiled in his spreadsheets was provided to a Daybreak consultant who developed journal entries regarding the company's oil and gas holdings, which were then entered into the company's accounting system, which in turn produced the company's financial statements. *Id.* at 68. When Hooper compiled this data, he understood that it would be included in Daybreak's financial statements filed with the Commission. *Id.* at 68-69.

G. Genesis Financial

Hooper testified that he prepared financial statements for Genesis Financial, which he described as a small "pink sheet" company that was in the hard money

lending business. ECF No. 2-2, Ex. 2 at 162-63. There, he helped prepare the company for a comprehensive Form 10-K filing, which reported financial results for a number of years in one filing. *Id.* Hooper testified that when he prepared these financial statements, he understood that they would be filed with the Commission. *Id.*

H. Hooper's Compensation

Hooper provided two charts to the Commission summarizing his compensation earned from each of the public companies detailed above. ECF No. 2-23, Ex. 23; ECF No. 2-24, Ex. 24. The Commission analyzed Hooper's charts and determined that Hooper received $77,660.51 for services he performed which the Commission alleges were in violation of the 1999 Agreement. ECF No. 5 at 16.

DISCUSSION

Under Section 20(c) of the Securities Act and Section 21(e)(1) of the Exchange Act, the Commission may petition a district court for an order requiring that parties comply with an SEC order. *See* 15 U.S.C. §§ 77t(c), 78u(e)(1); *see also S.E.C. v. Vindman*, No. 06 Civ. 14233, 2007 WL 1074941, at *1 (S.D.N.Y. Apr. 5, 2007). Section 20(c) of the Securities Act provides in relevant part that "[u]pon application of the [SEC], the district courts of the United States . . . shall have jurisdiction to issue writs of mandamus commanding any person to comply

with the provisions of this subchapter or any order of the Commission made in pursuance thereof." 15 U.S.C. § 77t(c). Similarly, Section 21(e)(1) of the Exchange Act provides that "[u]pon application of the [SEC] the district courts of the United States . . . shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding . . . any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder." 15 U.S.C. § 78u(e)(1).

The Commission alleges that Hooper's actions amounted to appearing before the SEC in violation of the 1999 Agreement, and so motioned this Court to enforce that agreement and disgorge Hooper of his ill-gotten gains. ECF No. 3; ECF No. 5. The Commission sought disgorgement in the amount of $91,354, representing $77,660 principal received and $13,694 in prejudgment interest. ECF No. 5 at 16.

After the Court heard oral argument, the Court granted Hooper's motion to stay the matter until after the Supreme Court ruled in *Kokesh v. S.E.C.,* 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017). ECF Nos. 24, 26. On June 7, 2017, the Court lifted the stay and set a supplemental briefing schedule. ECF No. 27. In supplemental briefing, the Commission amended the amount of disgorgement requested pursuant to *Kokesh* to $35,091.53, representing $30,833.13 principal received and $4,258.40 in prejudgment interest. ECF No. 28 at 2.

A. Statute of Limitation

As an initial matter, Hooper contends that the Commission's application for enforcement of the 1999 Agreement is barred by the statute of limitation set forth in 28 U.S.C. § 2462. ECF No. 16 at 6-10; ECF No. 35 at 5-7.

Section 2462 imposes a five-year statute of limitation on certain civil actions. 28 U.S.C. § 2462. Section 2462 applies to a "proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise. . . ." *Id.* It thus refers specifically to remedies "imposed in a punitive way." *Meeker v. Lehigh Valley R.R. Co.*, 236 U.S. 412, 423 (1915); *see also Gabelli v. S.E.C.*, 133 S. Ct. 1216, 1223 (2013) (Section 2462 reaches remedies "intended to punish"). It does not apply to civil proceedings seeking equitable remedies. *Meeker*, 236 U.S. at 423; *Gabelli*, 133 S. Ct. at 1223. The Supreme Court held in *Kokesh* that "[d]isgorgement in the securities-enforcement context is a 'penalty' within the meaning of §2462, and so disgorgement actions must be commenced within five years of the date the claim accrues." *Kokesh,* 137 S.Ct. at 1639. The Court in *Kokesh* concluded that "SEC disgorgement thus bears all the hallmarks of a penalty: It is imposed as a consequence of violating a public law and it is intended to deter, not to compensate." *Id.* at 1644.

The Commission seeks both injunctive and disgorgement remedies. ECF No. 5 at 15-17.

1. Disgorgement

Section 2462 limits the amount of disgorgement the Court may award. *See Kokesh*, 137 S. Ct. at 1639. Following the Court's decision in *Kokesh,* the Commission amended the requested disgorgement to $35,091.13, consisting of $30,833.13 in alleged payments to Hooper in violation of the 1999 Agreement and falling within the five-year statute of limitation, and $4,258.40 in prejudgment interest. ECF No. 28 at 2. The Application before the Court was filed on June 6, 2016. ECF No. 03. The five-year statute of limitation prohibits disgorgement for conduct occurring before June 6, 2011. In supplemental briefing, Hooper makes no argument that the Commission miscalculated actions falling within the statute of limitation. *See* ECF No. 35.

Hooper instead argues that § 2462 bars the Commission from filing a motion for enforcement before the Court. ECF No. 35 at 5-7. He contends that the statute begins to run when an offense is completed. ECF No. 35 at 5 (citing *Toussie v. United States,* 397 U.S. 112 (1970)). He further asserts that courts in both civil and criminal cases interpret *Toussie* in light of the "continuing offense doctrine" to mean that the statute of limitation begins to run on an offense as soon as all elements of the offense are completed in the first instance and that finding an offense is a continuing offense is disfavored. ECF No. 35 at 5-6. Hooper argues that "[c]onsistent with *Toussie,* the alleged violation of the order was complete

upon the first instance of the Hooper's involvement with a public company" because "[a]ll elements of the alleged violation were consummated upon that initial involvement." ECF No. 35 at 6. However, Plaintiff's argument misconstrues *Toussie;* the question in that case is whether the government can charge conduct that occurred before the statute of limitation because it continued until after the statute of limitation. *Toussie,* 397 U.S. 112. In contrast, the Commission's amended briefing only seeks disgorgement from actions in violation of the 1999 Agreement and completed within five years of filing. *See* ECF No. 28. The conduct now considered is wholly within the applicable limitation period, so it is unnecessary for the Court to reach the question of whether Hooper's conduct constitutes a continuing offense, because "when a defendant commits successive violations, the statute of limitations run separately from each violation." *Petrella v. Metro-Goldwyn-Mayer, Inc.,* 134 S.Ct. 1962, 1969 (2014). Nothing in § 2462 prevents the Commission from bringing a motion before the Court to address conduct occurring within the applicable statute of limitation period because § 2462 applies to claims rather than actions. Compare 28 U.S.C. § 1658.

2. Injunctive Relief

Section 2462 does not apply to injunctive remedies because it is plainly recognized that an injunction is an equitable remedy. *Weinberger v. Romero-Barcelo,* 456 U.S. 305, 311 (1982). The Commission seeks an order from this

Court that "Respondent comply with the 1999 order." ECF No. 5 at 17. This request for relief is properly considered an injunctive remedy because the 1999 Agreement was fundamentally an injunction; enforcing an injunction is itself an injunctive remedy. *See* ECF No. 2-7.

B. Hooper Practiced Before the SEC

Hooper contends that he did not appear before the SEC, as prohibited by the 1999 Agreement. ECF No. 16 at 10-18. While there is no factual dispute in this case, the parties disagree about what constitutes appearing before the SEC. *See* ECF No. 16 (Respondent's brief which neither presents the facts of the case nor argues with any of the factual assertions made by the Commission in ECF No. 05). The Court finds that Hooper practiced before the Commission as an accountant between 2006 and 2013.

SEC regulations define the term "practicing before the Commission" to include "[t]he preparation of any statement, opinion or other paper by any ... accountant ... filed with the Commission in any registration statement, notification, application, report or other document with the consent of such ... accountant[.]" Commission Rule of Practice 102(f)(2), 17 C.F.R. § 201.102(f)(2); *see* Securities Act Release No. 1761, 1938 WL 32440 (1938 release quoting language of current Rule 102(f)(2) regarding practicing before the Commission). As the Commission articulated in 2005:

> [T]he term "preparation" of a document is, we believe, sufficiently broad to encompass the preparation of data to be included in a document filed with the Commission, at least where, as here, the data was prepared for the express purpose of being included in such a document. [Rule 102(f)] recognizes that financial statements often incorporate information created, compiled, or edited by accountants who are not responsible for signing or filing the financial statements. *Thus, practicing before the Commission includes computing the figures and supplying the data incorporated into Commission filings and consenting to their incorporation.*

Robert W. Armstrong, III, 58 S.E.C. 542, 570-71, 2005 WL 1498425 at *11 (SEC June 24, 2005) (emphasis added). Federal courts have adopted the Commission's standard regarding this definition. *See S.E.C. v. Brown*, 878 F.Supp.2d 109, 125-26 (D.D.C. 2012); *S.E.C. v. Jones*, No. 1:13-cv-00163, 2015 WL 5775204 at *11-12 (D. Utah Sept. 30, 2015) (finding Respondent "consented" under Rule 102(f) where accountant prepared materials for public companies with the understanding and expectation that such information would be included in filings made with the Commission).

Under the definition provided in 17 C.F.R. § 201.102(f)(2), Hooper's actions qualify as appearing before the SEC. Between 2006 and 2013, Hooper helped publicly traded companies prepare financial statements and disclosure forms that were subsequently filed with the SEC. For example, he prepared financial statements for SpectrumDNA, which were submitted to the Company's auditor and filed with the Commission on a Form 10-Q. ECF No. 2-2, Ex. 2 at 42-44, 58-59. He also reclassified entries in SpectrumDNA's accounting records which were

reflected in their financial statements. *Id.* at 42-44, 127-29. In 2014, Hooper provided an income-tax footnote to an auditor from Gold Crest; four days later Gold Crest filed its annual report with the SEC on a Form 10-K, which included figures very similar to those contained in Hooper's footnote. *Id.* at 55-56; ECF No. 2-15, Ex. 15. In another instance, Hooper reclassified bookkeeping entries and created financial statements from those entries which were subsequently filed with the SEC so that Hooper's employer company could acquire the company for which Hooper did bookkeeping work. ECF No. 2-2, Ex. 2 at 78-80. Hooper acted as a bookkeeper and generated financial statements which were filed with the Commission on Forms 10-Q and 10-K for a company called QE Brushes. *Id.* at 111-13. For Koko, Ltd., Hooper maintained the primary accounting books and records; he generated financial statements which were filed with the Commission on Form 10-Q and Form 10-K. ECF No. 2-10, Ex. 10. In one instance, Hooper compiled data for Daybreak Oil and Gas which was used to generate their financial statements, which in turn were filed with the Commission. ECF No. 2-2, Ex. 2 at 68. Hooper also prepared Genesis Financial for a comprehensive Form 10-K filing, which included preparing financial statements. *Id.* at 162-63. Hooper knew that the statements he was preparing would be used in filing forms with the SEC. *See* ECF No. 2-2, Ex. 2. Hooper's undisputed actions, unquestionably constitute appearing before the SEC as Hooper, an accountant, was preparing financial

statements and other papers that were in fact filed with the commission with his knowledge that they would be so filed. *See* Commission Rule of Practice 102(f)(2), 17 C.F.R. § 201.102(f)(2).

Hooper argues that he did not appear before the SEC after entering the 1999 Agreement because he did not give his written consent to appear before the SEC. ECF No. 16 at 10-18. He argues that the definition of appearing before the SEC is defined by Regulation S-X, which, most notably, he contends requires that one give their written consent in order to appear before the Commission. *Id.* at 13-15. Regulation S-X sets forth the form, content, and related requirements for filing required financial statements with the SEC. Regulation S-X Rule 1-01 ("Application of Regulation S-X"), 17 C.F.R. § 201.1-01 ("Reg. S-X Rule 1-01") (available at: https://www.sec.gov/divisions/corpfin/ecfrlinks.shtml), which is the basis for Hooper's definition, is entitled "Qualifications of Accountants." 17 C.F.R. § 201.2-01. It does not purport to define the word "accountant" for all purposes, much less to narrowly define what it means to "appear or practice before the Commission" as an accountant under Rule 102 of the Commission's Rules of Practice. *See id.* The Court finds that the Commission's Rules of Practice do not require that an accountant give their written consent in order to appear before the Commission. *See* Commission Rule of Practice 102(f)(2), 17 C.F.R. § 201.102(f)(2). Because Hooper knew that the financial forms he was creating

were to be used in filings with the SEC, the Court finds that Hooper gave his consent to appear before the SEC.

C. Vagueness

Finally, Hooper contends that disgorgement is constitutionally barred because "the consent order was unconstitutionally vague and ambiguous on its face and otherwise failed to give the Hooper adequate notice that he could be exposed to the perils of disgorgement." ECF No. 16 at 19.

The Constitution undoubtedly guards against vague criminal statutes so as to make evident what conduct could be criminally punished. "The terms of a penal statute ... must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). The Supreme Court has even gone so far as to recognize that civil laws may also be void for vagueness. *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 132 S.Ct. 2307, 2309, 183 L.Ed. 2d 234 (2012) (extending *Connally,* 269 U.S. 385 to civil cases and noting that "[t]he void for vagueness doctrine addresses at

least two connected but discrete due process concerns: Regulated parties should know what is required of them so they may act accordingly; and precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.").

Hooper does not assert that the underlying statute is void for vagueness, as might implicate *Fox* or *Connally*. *See* ECF No. 16 at 18-19. Instead, Hooper argues that the consent order was unconstitutionally vague, because "the Commission is pursuing arbitrary and discriminatory enforcement of an ambiguous consent order with this Complaint." ECF No. 16 at 19.[1] This argument appears to present two constitutional claims: (1) that the 1999 Agreement was unconstitutionally vague, and (2) that it was discriminatorily enforced.

First, Hooper fails to establish that a negotiated agreement between two parties can be void for vagueness. *Connally, Fox,* and their progeny stand for the proposition that criminal and civil statutes, respectively, cannot be so vague that a

[1] Plaintiff also argued that his gains are not ill-gotten. ECF No. 16 at 18. Despite being in the same section as his constitutional argument, this argument seems unrelated to Hooper's constitutional arguments. The Court addressed the assertion that the alleged conduct does not rise to the level of conduct prohibited by the 1999 Agreement *supra*.

person of ordinary intelligence cannot understand what is prohibited by them. *See Connally*, 269 U.S. at 391; *Fox* 132 S.Ct. at 2309. Hooper cites out of circuit authority which reinforces that criminal statutes, including those pertaining to securities, can be void for vagueness. ECF No. 16 at 19 (*citing United States v. Wenger,* 427 F.3d 840, 851-52 (10th Cir. 2005)). Hooper's cited authority does not support the contention that an agreement between the SEC and an individual can be struck down for vagueness. *See Wenger,* 427 F.3d 840. Here, Hooper asks this Court to extrapolate from case law that a signed, negotiated agreement between two parties can be found void for vagueness. *See* ECF No. 16 at 19. Such a proposition is not legally supportable; none of the courts' reasoning from *Connally, Fox, or Wenger* applies to this situation. There, the courts were concerned that ordinary people would not understand what conduct was prohibited. *See Connally*, 269 U.S. at 391; *Fox*, 132 S. Ct. at 2309; *Wenger,* 427 F.3d at 851-52. Here, it cannot be said that Hooper did not have notice of what was required of him under the agreement. The terms of the 1999 Agreement are clear on its face. It included a patent prohibition that "Hooper is denied the privilege of appearing or practicing before the Commission as an accountant." ECF No. 2-7, Ex. 7 at 3. It goes on to detail the procedure for reinstatement and to require reinstatement before Hooper "resume appearing or practicing before the Commission as: a. a preparer or reviewer, or as a person responsible for the preparation or review, of

any public company's financial statements that are filed with the Commission." *Id.* at 3-4. He signed the agreement indicating that "he has read and understands this offer." ECF No. 2-7, Ex. 7 at 5. He was represented by counsel in the proceedings. *Id.* at 6. Perhaps most significant, Hooper conformed his conduct to the terms of the agreement for a period of at least five years. It was only after the mandatory five-year prohibition period ended that Hooper resumed activities that were prohibited by the agreement. Because he had not followed the agreed-upon reinstatement procedure, these activities were still prohibited. Hooper's conduct indicates that he understood what was prohibited under the 1999 Agreement. Hooper's contention that the 1999 Agreement was unconstitutionally vague is not supported by the cited case law or the facts of the case.

Second, Hooper's argument that the 1999 Agreement was discriminatorily enforced fails. The Commission and Hooper were the only parties to the 1999 Agreement. *See* ECF No. 2-7, Ex. 7 at 6. Therefore, the Commission could not enforce the 1999 Agreement against any other party. It cannot be said that the Commission is enforcing an agreement discriminatorily when it can only be enforced against one party. The Court finds that enforcing the 1999 Agreement with a court order does not violate Hooper's constitutional rights.

D. Remedy

1. Injunctive Relief

The Court finds the requested injunctive remedy to be within its power. Section 21(e)(1) of the Exchange Act provides that "[u]pon application of the [SEC] the district courts of the United States . . . shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding . . . any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder." 15 U.S.C. § 78u(e)(1). As Hooper has been found to be in violation of the 1999 Agreement, the Court grants the requested injunction to prevent further violations.

2. Disgorgement

Subject to § 2462's five-year limitation, the requested disgorgement remedy and interest on the amount disgorged is within the Court's discretion. There has been very little litigation of this kind throughout the country. Except as discussed *supra,* with regards to the statute of limitation, the Court finds none of the cited authority binding on the issue of the appropriateness of the requested disgorgement remedy. Hooper relies on a case from the Central District of California in which an individual violated an order banning him from practicing before the SEC, but the court did not order disgorgement, despite the SEC's request to do so. *S.E.C. v. Amundsen,* No. 83-cv-0711 (N.D. Cal. filed Feb. 25, 1983). Importantly, the court in *Amundsen* does not indicate that it lacked the authority to order disgorgement.

The Commission, conversely, has cited authority in which a court ordered disgorgement as a remedy for violations substantially similar to those present in this case. ECF No. 5 at 15 (*citing S.E.C. v. Jones*, 155 F.Supp.3d 1180 (D. Utah 2015)). *Jones* held that under Tenth Circuit law, disgorgement was an equitable remedy, and therefore it was an appropriate remedy for a violation of an SEC order. *Id.* at 1183. This Court finds that it has the power to authorize disgorgement as a remedy. Disgorgement is an appropriate remedy because it requires Hooper to forfeit any ill-gotten gains from violating the 1999 Agreement. Such forfeiture is an appropriate deterrent for Hooper and others similarly situated not to violate the 1999 Agreement or other such agreements. $30,833.13 is an appropriate amount of disgorgement because it is approximately equal to Hooper's unjust enrichment within the statute of limitation. *See First Pacific Bancorp,* 142 F.3d at 1192, n.6 (The amount a defendant should be ordered to disgorge should be a reasonable approximation of the profits from the violation).

The parties do not dispute the amount of compensation that Hooper received from accounting and bookkeeping work after the 1999 Agreement, nor do they dispute which of these activities fall within the statute of limitation period. As previously discussed, securities laws work to further the public interest. Violations of securities laws are against the public interest.

The Court declines to order the SEC's requested pre-judgment interest on the funds to be disgorged.

CONCLUSION

The Court has considered all of the arguments of the parties. To the extent not specifically addressed above, the remaining arguments are either moot or without merit.

IT IS SO ORDERED:

1. Applicant's Motion to Amend/Correct Securities and Exchange Commission's Motion for Enforcement of Administrative Order **(ECF No. 05) is GRANTED.**
2. Applicant's Motion for Enforcement of Administrative Order **(ECF No. 03) is GRANTED.**
3. Respondent Hooper shall comply with the Commission's 1999 Order.
4. Respondent Hooper is liable for disgorgement of $30,833.13, representing profits gained as a result of violations of the Commission's 1999 Order. Respondent shall satisfy this obligation by paying $30,833.13 to the Commission within 90 days after entry of this Order.

///

The District Court Executive is directed to file this Order, enter **JUDGMENT FOR THE APPLICANT**, provide copies to counsel, and **CLOSE** THE FILE.

DATED this August 10, 2017.

s/*Mary K. Dimke*
MARY K. DIMKE
UNITED STATES MAGISTRATE JUDGE