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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

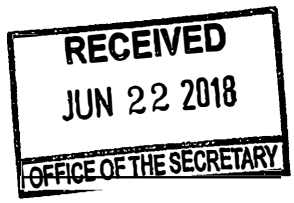
ADMINISTRATIVE PROCEEDING
File No. 3-18460

In the Matter of

David Alcorn,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND SANCTIONS



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COMMISSION RELEASES

Pursuant to the Order Following Prehearing Conference, AP Rulings Rel. No. 5737 (May 18, 2018), the Division of Enforcement ("Division") submits this motion for default and sanctions.

I. INTRODUCTION

This is a follow-on administrative proceeding based on entry of a permanent injunction against Respondent David Alcorn ("Respondent"). Respondent was properly served with the Order Instituting Proceedings ("OIP") in this matter on May 3, 2018, and was ordered to file an answer by May 29, 2018. Order Finding Service and Scheduling a Prehearing Conference, AP Rulings Rel. No. 5726 (May 14, 2018). Respondent has not filed an answer, and thus is in default. The Division of Enforcement moves, pursuant to Rules 155(a)(2) and 220(f) of the Securities and Exchange Commission ("SEC")'s Rules of Practice, for a finding that Respondent is in default and for the imposition of remedial sanctions. The Division specifically requests that Respondent be permanently barred from association with any 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.

II. BACKGROUND

A. Underlying Action

The Commission's complaint alleged that from May 2012 through October 2014 Respondent engaged in securities fraud, acted as an unregistered broker or dealer, and offered and sold securities in unregistered transactions, in connection with a $12.5 million securities offering fraud orchestrated by Respondent and Kent Maerki, through Janus Spectrum. The complaint alleged that Janus Spectrum held itself out as a company that prepares applications for Federal Communications Commission ("FCC") cellular spectrum licenses on behalf of third party clients, which included various fundraising entities owned and managed by codefendants Daryl Bank, Bobby Jones, Terry Johnson and Raymon Chadwick, who offered and sold securities purporting to raise funds to apply for and monetize FCC licenses through Janus

Spectrum. The complaint alleged that Respondent and Maerki organized and controlled those securities offerings. The complaint further alleged that, in connection with these offerings, Respondent and his codefendants misled investors by falsely representing that their investments would yield "double-digit" returns through the sale and lease of the FCC licenses to major wireless carriers, when Respondent and his codefendants knew, or were reckless or negligent in not knowing, that the FCC licenses, if obtained, were in a narrow band of spectrum that could not be sold or leased to any major wireless carriers, thereby greatly diminishing their value. The complaint further alleged that Respondent and his codefendants concealed the actual costs associated with obtaining the FCC licenses, and misappropriated investor funds to their own, undisclosed uses. *See* OIP ¶ 3 (summarizing allegations in the district court complaint); *see also* Searles Decl., Ex. 1 (First Amended Complaint, D. Az. Dkt. No. 105).

On September 29, 2017, the district court granted the SEC's motion for summary judgment against Respondent on all claims, concluding that the undisputed evidence established that Respondent had offered and sold unregistered securities, in violation of Section 5 of the Securities Act, 15 U.S.C. 77e(a) & (c), had defrauded investors, in violation of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a), and Section 10(b) of the Exchange Act,15 U.S.C. 78j(b), and Rule 10b-5, 17 C.F.R. 240.10b-5, and had acted as an unregistered broker, in violation of Section 15(a) of the Exchange Act, 15 U.S.C. 78o(a)(1). *See* Searles Decl., Ex. 2 (Summary Judgment Order, D. Az. Dkt. No. 239).

On February 9, 2018, a final judgment was entered against Respondent, permanently enjoining him from future violations of Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange*

Commission v. Janus Spectrum, LLC, et al., Civil Action Number 2:15-cv-00609-SMM, in the United States District Court for the District of Arizona. Searles Decl. Ex. 3 (Final Judgment, D. Az. Dkt. No. 258). The Court further ordered Respondent, jointly and severally, to pay $7,131,796 in disgorgement and prejudgment interest, and imposed a penalty of $3,394,798. *Id.*

B. The Institution of this Proceeding, the Service of the OIP and Respondent's Failure to Answer

On April 30, 2018, the Commission instituted this matter pursuant to Section 15(b) of the Exchange Act. The Order Instituting Proceeding ("OIP") was served on Respondent on May 3, 2018 in accordance with Rule 141(a)(2). *See* Division of Enforcement's Declaration of Service of the Order Instituting Proceedings; Proposed Date for Prehearing Conference (May 11, 2018). In an order dated May 14, 2018, the administrative law judge in this matter, the Honorable Cameron Elliot, found that the Division had established that service on Respondent had been properly effected and that Respondent had twenty days from the time of service to answer, *i.e.*, on or before May 29, 2018. Order Regarding Service and Scheduling Prehearing Conference, AP Rulings Rel. No. 5726 (May 14, 2018). No answer was filed or served by Respondent, and Respondents' counsel confirmed that it was Respondent's intention to default. Searles Decl., Ex. 4 (email dated May 30, 2018 from Respondent's counsel).

III. ARGUMENT

A. Respondent Is In Default and the Allegations of the OIP May Be Deemed To Be True

Because Respondent has not responded to the OIP, he is in default. Rule 155(a) of the Commission's Rules of Practice states:

> A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting

> proceedings, the allegations of which may be deemed to be true, if that party fails: . . .
>
> (2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding . . . .

Moreover, the OIP itself provides: "If Respondent fails to file the directed answer . . . . the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true . . . ." (OIP at p. 3).

Judge Elliot's finding that Respondent was properly served with the OIP, and has failed to answer are amply supported by the record. *See* Division of Enforcement's Statement Regarding Service of the Order Instituting Proceedings; Proposed Date for Prehearing Conference (May 11, 2018). Under Rule 155(a), the allegations of the OIP may thus be deemed to be true and the hearing officer may determine the proceedings against the party upon consideration of the record, including the order instituting proceedings.

B. The Findings in the Underlying Case Are Binding on Respondent

Where, as here, facts have been litigated and determined in an earlier judicial proceeding, those facts may not be revisited in a subsequent administrative proceeding. *See Peter J. Eichler, Jr.*, Initial Dec. Rel. No. 1032, 2016 WL 4035559 (July 8, 2016) ("It is well-established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, by consent, or after a trial") (collecting cases); *accord Robert Burton*, Initial Dec. Rel. No. 1014, 2016 WL 3030850 (May 27, 2016); *James E. Franklin*, Exchange Act Rel. No. 56649 (Oct. 12, 2007), 91 S.E.C. Docket 2708, 2713 & n.13, 2007 WL 2974200, *petition for review denied*, 285 F. App'x 761 (D.C. Cir. 2008); *In the Matter of Gunderson*, Exchange Act Release No. 61234, 2009 SEC LEXIS 4322 *15-16 (Dec. 23, 2009).

C. Imposition of a Permanent Bar Is Warranted

Based on the record here and in the underlying action, the Division respectfully requests that sanctions be imposed under Section 15(b)(6) of the Exchange Act. That section provides in relevant part:

> "With respect to any person who is associated, . . . or, at the time of the alleged misconduct, who was associated . . . with a broker or dealer, . . . the Commission, by order, shall censure, place limitations on the activities or functions of such a person, or suspend for a period not exceeding 12 months, or bar any such 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, if the Commission finds, on the record after notice and an opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person . . .
>
> (i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph . . . (D) . . . of paragraph (4) of [Section 15(b)]
>
> ***
>
> (ii) is enjoined from any action, conduct or practice specified in subparagraph (C) of such paragraph (4)" of Section 15(b).

Thus, Section 15(b)(6) authorizes the Commission to impose an associational bar against a respondent if: (1) at the time of the alleged misconduct, he was associated with a broker; (2) he has *either* (a) committed any act, or is subject to an order or finding that he committed any act enumerated in Section 15(b)(4)(D), ***or*** (b) is enjoined from any action, conduct or practice

specified in Section 15(b)(4)(C); and (3) a bar is in the public interest. Each of these factors is easily met here.

1. At the Time of the Misconduct, Respondent was Acting as An Unregistered Broker and Was Associated With an Unregistered Broker

First, the district court found that, at the time of the misconduct here, Respondent was acting as an unregistered broker. The Court found that:

> The undisputed evidence establishes that Janus Spectrum, Alcorn and Maerki acted as a broker because they actively solicited investors to purchase licenses through the various Fundraising Entities of Bank, Jones and Johnson/Chadwick. (Doc. 192 at 11-14). The Court further finds that Janus Spectrum, Alcorn and Maerki regularly participated in the securities transactions at key points during the formation and closing of investor transactions, as they described the merits of investing in spectrum licenses to potential investors, answered investor questions, and solicited potential investors by email, in one-on-one meeting, and/or held live presentations for potential investors. (Id.) Finally, it is undisputed that neither Janus Spectrum, Alcorn nor Maerki were registered as a broker-dealer with the SEC.

Searles Decl., Ex. 2 (summary judgment order, Dkt. 239, pp. 29-30). Based on that evidence, the Court concluded that Respondent had acted as an unregistered broker under the Act. *Id., see also Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *1 n. 2 (Apr. 23, 2015) ("A person who acts as an unregistered broker-dealer is 'associated' with a broker dealer for purposes of Section 15(b)."). As previously discussed, Respondent is bound by the district court's finding here. Administrative proceedings for sanctions against unregistered broker dealers are properly instituted under Section 15(b)(6), and the Commission regularly issues

against unregistered brokers pursuant to that section. *See, e.g., Hector J. Garcia*, Exch. Act Rel. No. 54116, (July 10, 2006); *James Joseph Conway*, Exch. Act Rel. No. 53722 (Apr. 25, 2006).

2. The District Court Found That Respondent Willfully Violated the Antifraud Provisions Of the Securities Laws and Enjoined Him Against Future Violations

The second element under Section 15(b)(6) is also established by the record in the underlying action because Respondent is subject to a finding that he committed acts enumerated in Section 15(b)(4)(D) and are also enjoined from conduct specified in Section 15(b)(4)(C). The acts enumerated under Section 15(b)(4)(D) include willful violations of the Securities Act, the Exchange Act or any rules or regulations under such statutes. Here, the district court found that Respondent willfully engaged in scheme to defraud and engaged in a fraudulent course of business. *See* Searles Decl., Ex. 2 (summary judgment order, Dkt. No. 239), at pp. 21-24 (finding Respondent engaged in a scheme to defraud); at p. 26 (finding Respondent made material misrepresentation and omissions). Further, Respondent is enjoined from conduct specified in Section 15(b)(4)(C), which provision includes permanent and temporary injunctions against "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security." Here, the district court permanently enjoined Respondent from, "violating, directly or indirectly, Section 10(b) [of the Exchange Act] and Rule 10b-5 thereunder" "in connection with the purchase or sale of any security" and also enjoined Respondent from violating Section 15(a) of the Exchange Act and Sections 5(a) & (c) and 17(a) of the Securities Act.[1] *See* Searles Decl., Ex. 3 (Final Judgment, Dkt. No. 258).

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[1] Respondent has filed an appeal of the district court's judgment. *See SEC v. Janus Spectrum LLC, et al.*, (9th Cir. Case No. 15403). The pendency of an appeal does not affect the proceeding here. As the Commission has stated, "it is well established that the existence of an appeal of the district court's decision does not affect the permanent injunction's status as a basis for administrative action." *Chris G. Gunderson,* Exchange Act Rel. No. 61234, p. 8 (Dec. 23, 2009) (brackets in original omitted). "Unless and until it is vacated, the permanent injunction entered against the respondent is a valid basis for administrative action." *Id.* (brackets in original omitted).

3. A Bar Is In The Public Interest

Finally, the record establishes that a bar is in the public interest. In determining whether an administrative sanction is in the public interest, the Commission considers a number of factors, including (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (3) the sincerity of the respondent's assurances against future violations; (4) recognition of wrongful conduct; and (5) the likelihood that the respondent's occupation will present future opportunities for violations. *See Steadman v. SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 81 (1981); *Lonny S. Bernath*, Initial Dec. Rel. No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (Apr. 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest). The district court found that all of these factors weighed in favor a permanent injunction. Order at 32.

As to whether a permanent bar is appropriate in a follow-on proceeding, precedents hold that, "[v]iolations involving the antifraud provisions of the federal securities laws are especially serious and merit the severest of sanctions." *Vinay Kumar Nevatia*, Initial Dec. Rel. No. 1021, 2016 WL 3162186, at *5 (June 7, 2016), citing *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *accord Eichler*, 2016 WL 4035559, at *6 ("The Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions ... Indeed, from 1995 to the present, there have been over thirty-five litigated follow-on proceedings based on antifraud injunctions in which the Commission issued opinions, and all of the respondents were barred ... ") (internal citations omitted). Moreover, "[t]he existence of an injunction can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Michael V. Lipkin and Joshua Shainberg*, Init. Dec. Rel. No. 317, 88 SEC Docket 2346, 2006 WL 2422652, at *4 (Aug. 21, 2006), *notice of finality*, 88 S.E.C. Docket 2872, 2006 WL 2668516 (Sept. 15, 2006).

a. Respondent's violations were egregious, intentional and recurrent

As previously noted, in the underlying district court action, Respondent was found liable for fraud, which finding alone proves that the violations were egregious. The district court found that the evidence was undisputed that Respondent knew the statements made in presentations and emails regarding the value of the spectrum licenses at issue were false. Searles Decl., Ex 2 (summary judgment order) at p. 22 ("[t]he undisputed evidence show that they knew the spectrum being sold had little or no value" ... and that the "representations about the value of and used of the spectrum being promoted, the expansion and guard bands, the alleged need for application urgency, and the ease to which those licenses could be monetized, were all false."); at p. 24 ("Alcorn and Maerki did not conduct their required due diligence on the value and potential uses of the FCC spectrum licenses in the guard and expansion band and were repeatedly warned in trade articles, in conversations with Sprint, and by their own advisors, that their underlying business model of leasing the FCC spectrum back to Sprint could not succeed."); at p. 25 ("Janus Spectrum, Alcorn and Maerki's statements regarding the value and potential uses of licenses in the expansion and guard band were materially false and misleading and they knew their statements were false and misleading."). The district court also found that Respondent led investors to believe that the $40,000 per spectrum license application fee covered the actual cost for applying for a license. In fact, Janus Spectrum's costs were approximately $4,000 per license and to avoid disclosing to Janus Spectrum's investors how much their application costs actually were, Respondent asked Janus Spectrum's engineering firm for invoices that described the services provided and stated "paid in full" but did not specify a dollar amount. *Id.*, at 23. The district court also found that Respondent prepared "commission side letters" to allow Johnson and Chadwick to conceal their 33% commissions from investors. *Id.* at 24.

Further, Respondent's fraud was not an isolated incident. He engaged in the scheme to defraud over a number of years that involved numerous fundraising entities and over 300

nationwide investors. In sum, the egregiousness and extent of Respondent's fraud clearly favor a permanent bar under *Steadman*.

b. The remaining *Steadman* factors also favor a permanent bar

Respondent has provided no assurance against future violations and lacks any apparent recognition of his wrongful conduct. As the district court found, "Alcorn's and Maerki's violations were egregious, recurrent and involved a high degree of scienter.....and neither Alcorn nor Maerki has expressed remorse or given any assurance against future violations." Searles Decl. Ex. 2 (summary judgment order) at p. 33. The "absence of recognition by [a respondent] of the wrongful nature of his conduct" favors a permanent bar. *Jonathan D. Havey, CPA*, Initial Dec. Rel. No. 959, 2016 SEC LEXIS 522, at *11 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *Siming Yang*, Initial Dec. Rel. No. 788, 2015 SEC LEXIS 1735, at *10 (May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow on proceeding to civil injunction, that, "[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct"); *Delsa U. Thomas and The D. Christopher Capital Management Group, LLC*, Initial Dec. Rel. No. 205, 2014 SEC LEXIS 4181, at 24 (Nov. 4, 2014) (imposing permanent bar and revoking adviser's registration on summary disposition following civil fraud injunction, noting that "Respondents do not recognize the wrongful nature of their conduct. Instead, they deny any culpability, insist that none of their conduct was inappropriate, and accuse the Commission and the Commission's witnesses of bias or lying"); *Terrence O'Donnell*, Initial Dec. Rel. No. 334, 2007 SEC LEXIS 2148, at *14 (Sept. 20, 2007) (weighing in favor of bar respondent's "protest" that the securities laws were not sufficiently clear, finding this "evidence that [respondent] still seeks to minimize his misconduct"); *Steadman*, 603 F.2d at 1140.

The final *Steadman* factor considers "the likelihood that the respondent's occupation will present future opportunities for violations." Here, it appears that Respondent's only recent

occupation was the offer and sale securities in the form of investment contracts to secure and monetize worthless spectrum licenses in a get rich quick scheme that only enriched himself and his codefendants, and Respondent appears ready and able to continue to peddle worthless securities. In short, all of the *Steadman* factors favor the imposition of the bar, which is strongly in the public's interest.

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that Respondent be barred 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[2].

June 21, 2018

Respectfully submitted,

Donald W. Searles
Attorney for ~~Division~~ of Enforcement
Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, California 90071
Telephone: (323) 965-3998

[2] The Division of Enforcement notes that such a bar has been entered against each of Respondent's codefendants based on their offers of settlement. *See Bobby D. Jones*, Exchange Act Rel. No. 83011 (Apr. 9, 2018); *Daryl G. Bank*, Exchange Act Rel. No. 82711 (Feb. 14, 2018), *Raymon G. Chadwick, Jr.*, Exchange Act Rel. No. 77519 (Apr. 5, 2016), *Terry W. Johnson*, Exchange Act Rel. No. 77517 (Apr. 5, 2016), and *Kent Maerki*, Exchange Act Rel. No. 82963 (Mar. 29, 2018).

In the Matter of David Alcorn
Administrative Proceeding File No. 3-18460
Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND SANCTIONS

was filed with the Office of the Secretary of the Commission and served by email and UPS Overnight Mail on June 21, 2018, upon the following parties as follows:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (703) 813-9793

(By Facsimile and UPS)
(Original and three copies)

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
Email: alj@sec.gov

(By Email and UPS)

David Alcorn
c/o Thomas E. Littler, Esq.
341 W. Secretariat Drive
Tempe, AZ 85284

(By U.S. Mail only)

Dated: June 21, 2018

/Donald W. Searles/
Donald W. Searles

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18460

In the Matter of

David Alcorn,

Respondent.

DECLARATION OF DONALD W. SEARLES IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND SANCTIONS

I, Donald W. Searles, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney at law admitted to practice law in the State of California and in the Central District of California. I am employed as a Senior Trial Counsel for the Division of Enforcement ("Division") at the Los Angeles Regional Office of the U.S. Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, California 90071, Telephone: (323) 965-3998, extension 54573. I have personal knowledge of each of the facts set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

2. On April 30, 2018 the Division instituted this matter pursuant to Section 15(b) of the Exchange Act.

3. On May 3, 2018 the Order Instituting Proceeding was served on Respondent and Respondent was ordered to file any answer by May 29, 2018.

4. As of this filing, no answer was filed by Respondent.

5. Attached as **Exhibit 1** is a true and correct copy of the First Amended Complaint filed against Respondent by the Securities and Exchange Commission in the United States District Court for the District of Arizona, *SEC v. Janus Spectrum, et al.*, Case No. CV-15-609-PHX-SMM (Dkt. No. 105).

6. Attached as **Exhibit 2** is a true and correct copy of the District Court's Summary Judgment Order against Respondent (Dkt. No. 96).

7. Attached as **Exhibit 3** is a true and correct copy of the Final Judgment against Respondent (Dkt. No. 258).

8. Attached as **Exhibit 4** is a true and correct copy of an email communication dated May 30, 2018, in which Respondent's counsel is confirming Respondent's intent to

default in this administrative action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 21, 2018, in Los Angeles, California.

Donald W. Searles

In the Matter of David Alcorn
Administrative Proceeding File No. 3-18460
Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT AND SANCTIONS

was filed with the Office of the Secretary of the Commission and served by email and UPS Overnight Mail on June 21, 2018, upon the following parties as follows:

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Honorable Cameron Elliot
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100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
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David Alcorn
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341 W. Secretariat Drive
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Dated: June 21, 2018

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Securities and Exchange Commission,

Plaintiff,

vs.

Janus Spectrum LLC; David Alcorn; David Alcorn Professional Corporation; Kent Maerki; Dominion Private Client Group, LLC; Janus Spectrum Group, LLC; Spectrum Management, LLC; Spectrum 100, LLC; Spectrum 100 Management, LLC; Prime Spectrum, LLC; Prime Spectrum Management, LLC; Daryl G. Bank; Premier Spectrum Group, PMA; Bobby D. Jones; Innovative Group, PMA; Premier Group, PMA; Prosperity Group, PMA; Terry W. Johnson; and Raymon G. Chadwick, Jr.,

Defendants.

Case No. 2:15-cv-00609-PHX-SMM

FIRST AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC") alleges as follows:

SUMMARY

1. This matter involves a securities offering fraud orchestrated by Defendants David Alcorn and Kent Maerki, through the company they founded and managed, Defendant Janus Spectrum LLC ("Janus Spectrum"). Janus Spectrum held itself out as a company that prepares applications for Federal Communications Commission ("FCC") cellular spectrum licenses on behalf of third party fundraising entities. Alcorn and Maerki organized the business so that the fundraising entities, owned and managed by Defendants Daryl Bank, Bobby Jones, Terry Johnson, and Raymon Chadwick, offered and sold securities purporting to raise funds to apply for FCC licenses. In these offerings, Defendants misled investors by promising that their investments would yield substantial returns through the sale or lease of the FCC licenses to major wireless carriers, when in fact, Defendants knew or were reckless or negligent in not knowing that the FCC licenses, if obtained, could never be sold or leased by any major wireless carriers. Defendants further concealed the actual costs associated with obtaining these FCC licenses, and pocketed substantial sums of investor moneys for their own, undisclosed, uses.

2. In all, the fundraising entities controlled by Bank, Jones, Johnson, and Chadwick raised over $12.4 million from investors from May 2012 through October 2014. After collecting and pooling these investor funds, the fundraising entities funneled a significant percentage of the funds to Janus Spectrum, Alcorn, and Maerki, with only a small portion of these funds used to prepare applications for FCC licenses. Alcorn and Maerki kept the remainder of the investor funds for personal use. In all, Janus Spectrum received at least $6,834,700 from the fundraising entities. Of that amount, Alcorn received at least $514,996, and Maerki received at least $867,665 of investor funds. Bank paid himself and his other businesses approximately $4,494,900 out of investor funds. Jones received approximately $622,700 from investor funds and referral fees from Janus Spectrum. Chadwick and

Johnson received approximately $456,483 from investor funds and referral fees from Janus Spectrum.

3. By conducting this fraudulent scheme and lying to investors, Defendants violated the securities registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, and the broker-dealer registration provisions of Section 15(a)(1) of the Exchange Act.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a)], and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa].

5. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this complaint.

6. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the transactions, acts, practices and courses of conduct constituting violations of the federal securities laws occurred within this district. In addition, venue is proper in this district because Janus Spectrum's principal place of business is in this district and Alcorn and Maerki reside in this district.

DEFENDANTS

A. The Janus Spectrum Defendants

7. **Janus Spectrum** is a New Mexico limited liability company, formed in October 2011, with its principal place of business in Glendale, Arizona. Janus

Spectrum holds itself out to be an FCC license application services company. Janus Spectrum has not registered any offerings of securities under the Securities Act, nor has it registered a class of any securities under the Exchange Act.

8. **David Alcorn,** age 70, of Scottsdale, Arizona is a founder and managing director of Janus Spectrum. Alcorn is the president of David Alcorn Professional Corporation, which became the sole owner of Janus Spectrum as of January 2014. Prior to January 2014, David Alcorn Professional Corporation held a 55% ownership interest in Janus Spectrum.

9. **Kent Maerki,** age 72, of Scottsdale, Arizona is a founder and former owner of Janus Spectrum. Until January 2014, Maerki held a 45% ownership interest in Janus Spectrum. Maerki is currently a consultant to Janus Spectrum.

10. **David Alcorn Professional Corporation** ("DAPC") is an Arizona corporation.

11. David Alcorn is the sole officer, director and shareholder of DAPC.

12. At all times relevant to this action, DAPC was a manager and member of, and held a majority ownership interest in, Janus Spectrum.

13. Pursuant to the terms of the Operating Agreement of Janus Spectrum, executed on September 20, 2011, DAPC, as a member, manager, and majority owner of Janus Spectrum, exercised actual power or control over all business and management aspects of Janus Spectrum, including the power to borrow money for Janus Spectrum, to enter into any agreements on behalf of Janus Spectrum, and to perform "all other acts" that may be necessary or appropriate to the conduct of Janus Spectrum's business. These and other powers vested DAPC with final decision-making authority on behalf of Janus Spectrum, including all powers over its finances and its corporate structure.

14. In addition, pursuant to the Disbursement Agreement between DAPC and Janus Spectrum, also executed on September 20, 2011, during the period from November 30, 2011 through February 27, 2014, Janus Spectrum made payments to

DAPC totaling approximately $3,123,050 out of investor funds.

15. Thereafter, while Janus Spectrum was in a Chapter 11 bankruptcy proceeding, it made additional payments to DAPC, during the period from March, 2014 through July 2015, totaling approximately $807,143 out of investor funds.

B. The Fundraising Entity Defendants

16. The top fundraising entities for Janus Spectrum and their respective principals were: (1) Dominion Private Client Group, LLC ("Dominion Private Client Group"), Janus Spectrum Group, LLC ("Janus Spectrum Group"), Spectrum Management, LLC ("Spectrum Management"), Spectrum 100, LLC ("Spectrum 100"), Spectrum 100 Management, LLC ("Spectrum 100 Management"), Prime Spectrum, LLC ("Prime Spectrum"), and Prime Spectrum Management, LLC ("Prime Spectrum Management")—Daryl Bank; (2) Premier Spectrum Group, PMA ("Premier Spectrum Group")—Bobby Jones; and (3) Innovative Group, PMA ("Innovative Group"), Premier Group, PMA ("Premier Group"), and Prosperity Group, PMA ("Prosperity Group")—Terry Johnson and Raymon Chadwick (collectively, the "Fundraising Entities").

1. The Bank Defendants

17. **Daryl G. Bank**, age 44, of Port St. Lucie, Florida is the managing member of Dominion Private Client Group. Bank is the managing member of Janus Spectrum Group, Spectrum 100, and Prime Spectrum through his entities Spectrum Management, Spectrum 100 Management, and Prime Spectrum Management respectively (collectively with Bank and Dominion Private Group, the "Bank Defendants").

18. **Dominion Private Client Group** is a Virginia limited liability company with its principal place of business in Virginia Beach, Virginia. Dominion Private Client Group offered and sold securities in connection with acquiring and monetizing FCC licenses for 800 MHz spectrum. Dominion Private Client Group has not registered any offerings of securities under the Securities Act, nor has it registered a

class of securities under the Exchange Act.

19. **Janus Spectrum Group** is a Virginia limited liability company with its principal place of business in Virginia Beach, Virginia. Janus Spectrum Group offered and sold securities in connection with acquiring and monetizing FCC licenses for 800 MHz spectrum. Janus Spectrum Group has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

20. **Spectrum Management** is a Virginia limited liability company with its principal place of business in Virginia Beach, Virginia. Spectrum Management is the managing member of Janus Spectrum Group. Spectrum Management has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

21. **Spectrum 100** is a Virginia limited liability company with its principal place of business in Virginia Beach, Virginia. Spectrum 100 offered and sold securities in connection with acquiring and monetizing FCC licenses for 800 MHz spectrum. Spectrum 100 has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

22. **Spectrum 100 Management** is a Virginia limited liability company with its principal place of business in Virginia Beach, Virginia. Spectrum 100 Management is the managing member of Spectrum 100. Spectrum 100 Management has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

23. **Prime Spectrum** is a Virginia limited liability company with its principal place of business in Virginia Beach, Virginia. Prime Spectrum offered and sold securities in connection with acquiring and monetizing FCC licenses for 800 MHz spectrum. Prime Spectrum has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

24. **Prime Spectrum Management** is a Virginia limited liability company

with its principal place of business in Virginia Beach, Virginia. Prime Spectrum Management is the managing member of Prime Spectrum. Prime Spectrum Management has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

2. The Jones Defendants

25. **Bobby D. Jones**, age 68, of Phoenix, Arizona, is the founder and trustee of Premier Spectrum Group (collectively with Jones, the "Jones Defendants").

26. **Premier Spectrum Group** is a Texas private membership association with its principal place of business in Phoenix, Arizona. Premier Spectrum Group offered and sold securities in connection with acquiring and monetizing FCC licenses for 800 MHz spectrum. Premier Spectrum Group has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

3. The Johnson/Chadwick Defendants

27. **Terry W. Johnson**, age 57, of Heath, Texas, is co-founder of Innovative Group, Premier Group, and Prosperity Group. In addition, Johnson is a principal trustee and managing member of Premier Group, and is the principal trustee and managing member of Prosperity Group.

28. **Raymon G. Chadwick, Jr.**, of Grand Prairie, Texas, age 60, is co-founder of Innovative Group, Premier Group, and Prosperity Group (together with Johnson and Chadwick, the "Johnson/Chadwick Defendants"). In addition, Chadwick is the principal trustee and managing member of Innovative Group, and is a principal trustee and managing member of Premier Group.

29. **Innovative Group** is a Texas private membership association with its principal place of business in Grand Prairie, Texas. Innovative Group offered and sold securities in connection with acquiring and monetizing FCC licenses for 800 MHz spectrum. Innovative Group has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

30. **Premier Group** is a Texas private membership association with its principal place of business in Grand Prairie, Texas. Premier Group offered and sold securities in connection with acquiring and monetizing FCC licenses for 800 MHz spectrum. Premier Group has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

31. **Prosperity Group** is a Texas private membership association with its principal place of business in Heath, Texas. Prosperity Group offered and sold securities in connection with acquiring and monetizing FCC licenses for 800 MHz spectrum. Prosperity Group has not registered any offerings of securities under the Securities Act, nor has it registered a class of securities under the Exchange Act.

STATEMENT OF FACTS

A. The 800 MHz Wireless Spectrum

32. Among other things, the FCC regulates wireless communications. It does so in part through its oversight of the various frequencies that comprise the country's available wireless capacity, or spectrum. The FCC issues licenses to use the various frequencies throughout the country. The most common licenses involve transmitting radio, television, and cellular telephone signals on certain frequencies.

33. In 2004, the FCC adopted a plan to reconfigure the 800 MHz portion, or band, of the wireless spectrum. This plan was designed to address increasing interference problems with the operation of public safety communication systems using the 800 MHz band caused by the operation of closely situated high-density commercial wireless systems.

34. The plan separated the frequencies on which public safety systems operate from the frequencies on which commercial wireless carriers operate by moving public safety operations to the lower portion of the 800 MHz band and moving commercial wireless systems to the higher portion of the band.

35. As part of its plan, the FCC established the Expansion Band and Guard Band to provide public safety licensees with a buffer from the cellular portion of the

band. The Expansion Band and Guard Band each provide one MHz of separation from the cellular portion of the band.

36. The FCC's rules specify that a licensee using an Expansion Band or Guard Band channel is only authorized to use a maximum bandwidth of 20 kilohertz (20 thousand Hertz).

37. Major wireless carriers such as Sprint currently use technology for cellular voice and data services that require a minimum bandwidth of 1.25 megahertz (1.25 million Hertz) to 1.4 megahertz (1.4 million Hertz). Thus, the FCC would not permit major wireless carriers to operate their cellular services on the 800 MHz Expansion Band or Guard Band because those services would not fit within the FCC's authorized maximum bandwidth of 20 kilohertz. This remains true regardless of whether these major wireless carriers buy or lease the licenses from others.

B. The Investment Scheme

38. Janus Spectrum, Alcorn, and Maerki orchestrated an investment scheme involving them, the Bank Defendants, the Jones Defendants, and the Johnson/Chadwick Defendants, disguised as a business seeking to obtain and monetize FCC licenses in the Expansion Band and Guard Band.

1. Role of the Janus Spectrum Defendants in the scheme

39. Janus Spectrum's business had two parts, each of which played a part in the investment scheme.

40. The first part of Janus Spectrum's business involved offering and providing FCC license application services to over 20 fundraising entities, including all of the Fundraising Entity Defendants, which Janus Spectrum called "clients." These application services included working with third parties, such as engineers and attorneys, to prepare and file spectrum applications with the FCC.

41. Janus Spectrum prepared applications for 800 MHz spectrum in the Expansion Band and Guard Band. These bands represented the only spectrum that non-public safety entities could apply for in the 800 MHz band from January 2013

through the present. As the FCC began releasing blocks of licenses, Janus Spectrum submitted a number of applications, and as a result, some of the Fundraising Entities received licenses.

42. The second part of Janus Spectrum's business involved encouraging investment in the Fundraising Entities. From the inception of Janus Spectrum, Alcorn and Maerki created a layered investment scheme that structured the business, relationships, and written agreements with the Fundraising Entities to avoid the appearance that Janus Spectrum was offering securities. Alcorn and Maerki relied on the Fundraising Entities to overtly offer securities, hoping to shield themselves from the registration requirements and potential liability associated with offering securities.

43. Although the membership interests were offered and sold by the Fundraising Entities, Alcorn and Maerki were intimately involved in their offer and sale.

44. Alcorn and Maerki each referred potential investors to the Fundraising Entities. They participated in conference calls with potential investors. They made presentations to potential investors regarding the investments in the Fundraising Entities. They promised investors potential returns on the investment during in-person meetings or via email and telephone. Alcorn and Maerki frequently encouraged the Fundraising Entities to use them to close sales. Alcorn also answered investors' questions regarding the possible uses of the 800 MHz spectrum.

45. Janus Spectrum, Alcorn, and Maerki also furthered the scheme through numerous deceptive acts. Alcorn and Maerki, among other things, encouraged and facilitated the setup and use of the Fundraising Entities. They used the layered structure in an attempt to evade the securities laws, including the registration requirements.

46. They also used the layered structure to funnel investor funds from the Fundraising Entities to Janus Spectrum and themselves. From May 2012 to October 2014, the Fundraising Entities paid at least $6,834,700 to Janus Spectrum. Of that

amount, Alcorn received at least $514,996, and Maerki received at least $867,665 of investor funds, concealing from investors that the FCC license application costs were substantially less than the amount they were charging per application. Alcorn and Maerki controlled how much of these funds they paid to themselves and as referral fees to Jones, Johnson, and Chadwick. Defendants did not disclose to investors how much of their investment went to Alcorn, Maerki, Bank, Jones, Johnson, Chadwick or their entities instead of toward the costs of obtaining FCC license applications.

47. In furtherance of their scheme, Alcorn and Maerki also made investor referrals to the Fundraising Entities. They provided misleading videos entitled "Money from Thin Air" and "Educational Preview About Airwaves Presentation" to the Fundraising Entities for use in soliciting and deceiving investors. They also provided sample offering documents to Bank which were virtually identical to the offering documents used by Jones. All of these materials misrepresented the anticipated use and value of the 800 MHz spectrum licenses by promising that they could be sold or leased to major wireless carriers. Further, these materials concealed the use of investor funds for referral fees, commissions, and payments to Alcorn, Maerki, Bank, Jones, Johnson and Chadwick.

48. Alcorn and Maerki knew, or were reckless or negligent in not knowing, that they committed deceptive acts in furtherance of the fraudulent scheme. Alcorn and Maerki knowingly supported the solicitation and sales efforts of the Fundraising Entities and controlled Janus Spectrum's bank accounts into which the Fundraising Entities funneled investor funds.

49. During the relevant time period, Alcorn and Maerki were owners and managers of Janus Spectrum; thus, their knowledge that they committed deceptive acts in furtherance of the fraudulent scheme is imputed to Janus Spectrum.

2. The Janus Spectrum Defendants' material misrepresentations

50. Janus Spectrum, Alcorn, and Maerki misrepresented the potential use of the spectrum in the 800 MHz Expansion Band and Guard Band, the only type of

spectrum for which Janus Spectrum prepared applications. Specifically, Alcorn and Maerki represented to the Fundraising Entities and investors that the licenses Janus Spectrum applied for could be used by major wireless carriers, such as Sprint, to operate their cellular systems.

51. Nonetheless, Alcorn falsely represented to investors that 800 MHz spectrum in the Expansion Band and Guard Band could be used by major wireless carriers like Sprint. At least one potential investor asked which entities would want to lease the spectrum being applied for by Janus Spectrum, and Alcorn responded "The most likely user will be Sprint but the market is very deep."

52. Maerki made the same misrepresentation to potential investors in two video presentations. In the first video, entitled "Money from Thin Air," Maerki repeatedly touted the potential of the 800 MHz spectrum and misrepresented the use of this spectrum by major wireless carriers. Specifically, Maerki represented "Sprint is going to need this [the 800 MHz spectrum] ...But if they don't take it, AT&T needs it, and so does Verizon. More importantly T-Mobile really needs it. So do the other ones."

53. Maerki emailed this video to the Fundraising Entities for their use and directly to potential investors. Maerki knew that the Fundraising Entities would use the video to solicit investors when he sent the video. For example, Jones sent Maerki an email in which Jones clearly stated that he planned to use the video during a webinar with potential investors.

54. In the second video, entitled "Educational Preview About Airwaves Presentation" and also referred to as the "10-Minute Spectrum Preview," Maerki again repeatedly touted the potential of the 800 MHz spectrum. For example, Maerki represented that: "Obviously, Sprint will be the very apparent candidate for us to lease the 800 megahertz spectrum within [sic] interruption immediately after having relinquished it to the FCC." He also represented: "According to recent analytical models, by owning an 800 megahertz license, one may achieve an annual income up

to 300 percent or more while sharing the license with a major wireless carrier."

55. Maerki emailed this video to potential investors and, at Alcorn's request, Maerki sent the video to Fundraising Entities to use to solicit investors.

56. Alcorn and Maerki also attended a live presentation for potential investors in Premier Spectrum Group hosted by Jones at which Maerki misrepresented that the 800 MHz Expansion Band and Guard Band could be used by Sprint. At that presentation, Maerki stated "We have two of our licenses. We will have more and ultimately we will have all 25. Everybody will have their licenses....If you hire us, we will go talk to Sprint and make a deal. That's what we can guarantee. We can't guarantee anything else."

57. In 2012, Alcorn and Maerki received questions from potential investors, indicating that the 800 MHz spectrum in the Expansion Band and Guard Band may not be able to be used by major wireless carriers. Some of these potential investors raised questions regarding the feasibility of leasing or selling the spectrum to major wireless carriers after speaking with FCC representatives. Despite these questions, Alcorn and Maerki did not follow up on these questions and never spoke to anyone at the FCC about whether major wireless carriers could use the Expansion Band and Guard Band of the 800 MHz spectrum. They simply continued to market the spectrum licenses as tremendously valuable to major wireless carriers.

58. Alcorn and Maerki made these misrepresentations even though they knew, or were reckless or negligent in not knowing, that the statements were false. Both knew, or were reckless or negligent in not knowing, that major wireless carriers cannot use this particular spectrum to operate their cellular systems. Instead, this spectrum is most typically used for small scale push-to-talk services, such as those used by local law enforcement or small businesses such as pizza delivery companies.

59. In 2010, two years before the first securities offering, a Sprint representative told Alcorn that Sprint would not be able to use the spectrum for which Janus Spectrum was applying because of FCC restrictions. Alcorn was again advised

of this important limitation in 2011, a year before the first securities offering, when Janus Spectrum's primary engineer told Alcorn that he did "not see Sprint being a customer for a long time."

60. Both Alcorn and Maerki received questions from potential investors indicating that the 800 MHz spectrum in the Expansion Band and Guard Band may not be able to be used by major wireless carriers. Nevertheless, they failed to follow up on this information and continued to market the spectrum licenses as tremendously valuable to major wireless carriers.

61. During the relevant time period, Alcorn and Maerki were owners and managers of Janus Spectrum; thus, their knowledge of the falsity of their representations is imputed to Janus Spectrum.

62. Alcorn's and Maerki's misrepresentations and omissions were material. Investors considered the ability to lease or sell the 800 MHz spectrum obtained by Janus Spectrum to major wireless carriers important to their decision to invest in the scheme. Knowing that the 800 MHz spectrum in the Expansion Band and Guard Band could not be used by major wireless carriers, such as Sprint, affected investors' likelihood and ability of obtaining a return on their investments. The technical limitations of the Expansion Band and Guard Band meant they could not be used by major wireless carriers, but instead only by small businesses, greatly diminishing the value of the licenses.

3. The Role of the Fundraising Entity Defendants in the scheme

63. With Janus Spectrum's support, the Fundraising Entities offered investors the opportunity to become members in a limited liability company, or "LLC," or in a private membership association, or "PMA," by purchasing membership interests. The Fundraising Entities pooled investor funds received from the sale of these membership interests.

64. A significant portion of the investor funds raised by the Fundraising Entities was funneled to Janus Spectrum. From May 2012 to October 2014, Janus

Spectrum received at least $6,834,700 from the Fundraising Entities.

65. The Fundraising Entities used a portion of the funds to purchase license preparation and submission services from Janus Spectrum for applications in specific geographic areas.

66. The Fundraising Entities represented to investors that Janus Spectrum would handle all aspects of the application process and that Janus Spectrum and the Fundraising Entities would manage the FCC licenses and negotiate deals on their behalf.

a. The Bank Defendants' securities offerings

67. From September 2012 through October 2014, Bank's three Dominion Private Client Group offerings—Janus Spectrum Group, Spectrum 100, and Prime Spectrum—raised a total of approximately $8,194,600 from 111 investors nationwide.

68. The structure of all three offerings was nearly identical. Dominion Private Client Group and the respective issuer LLCs, Janus Spectrum Group, Spectrum 100, and Prime Spectrum, each offered LLC membership interests. Spectrum Management, Spectrum 100 Management, and Prime Spectrum Management managed the offerings as the managing member. Pursuant to the issuers' operating agreements, Spectrum Management, Spectrum 100 Management, and Prime Spectrum Management had "complete power and authority for the management and operation of the [issuer's] assets and business…"

69. Dominion Private Client Group, the three issuer LLCs, and Bank solicited investors nationwide both directly and through salespeople.

70. Potential investors received offering-specific documents for the three Dominion Private Client Group spectrum offerings managed through Dominion Private Client Group, Spectrum Management, Spectrum 100 Management, and Prime Spectrum Management. The offering documents represented that the three issuer LLCs would apply for and obtain FCC spectrum licenses using Janus Spectrum's

application services. Bank was the primary preparer of the offering documents and, as principal and managing member of his respective Fundraising Entities, Bank had ultimate authority over the offering documents' content and whether and how to communicate that content to potential investors.

71. Bank also hosted a radio show, aired on public radio stations and available on YouTube, during which he spoke about the spectrum investment opportunity in general and interviewed Alcorn and Maerki.

72. In addition, Bank recorded a video presentation about the spectrum opportunity, which was also uploaded to YouTube. Bank appeared in the video presentation and, after giving an introduction in which he stated that "[t]here is an opportunity, which is what Kent is going to talk about today, where . . . we can actually invest in those airwaves," he then played the "Money from Thin Air" video which misrepresented the potential of 800 MHz spectrum in the Expansion Band and Guard Band and misled investors regarding the use of this spectrum by major wireless carriers.

73. Many of the investors in the three Dominion Private Client Group spectrum offerings were unsophisticated, did not have a technical background or understanding of spectrum, and did not have any substantial role in preparing the applications or involvement in the entities in which they bought membership interests. Investors were entirely dependent on the information and efforts of Janus Spectrum and Bank's respective Fundraising Entities.

74. Bank, Dominion Private Client Group, and the three issuer LLCs, Janus Spectrum Group, Spectrum 100, and Prime Spectrum, and the three managing member LLCs, Spectrum Management, Spectrum 100 Management, and Prime Spectrum Management, engaged in multiple deceptive acts that furthered the fraudulent investment scheme. In addition to disseminating misleading information to investors, Bank transferred almost $4.5 million in investor funds raised through the three entities to his personal and other business accounts, and concealed this

information from investors. Of this amount at least $1,339,681 went to Bank personally, and approximately $3,040,904 was sent to Dominion Private Client Group. Bank also funneled almost $3.7 million of investor funds to Janus Spectrum.

75. Bank knew, or was reckless or negligent in not knowing, that he committed deceptive acts in furtherance of the fraudulent scheme. Bank controlled the bank accounts into which he funneled investor funds and from which he paid himself substantial amounts.

76. During the relevant time period, Bank was the managing member of Janus Spectrum Group, Spectrum 100, and Prime Spectrum through his entities Spectrum Management, Spectrum 100 Management, and Prime Spectrum Management; thus, his knowledge that he committed deceptive acts in furtherance of the fraudulent scheme is imputed to his respective Fundraising Entities.

b. Jones' Premier Spectrum Group offering

77. From January 2013 to October 2013, Jones' Premier Spectrum Group offering raised approximately $407,050 from 13 investors nationwide.

78. Premier Spectrum Group, Jones, and his salesperson directly solicited investors nationwide through the company's website (which was not password protected), webinars, live presentations and email.

79. Premier Spectrum Group and Jones held webinars in which he appeared and, after giving an introduction in which he stated "Kent [Maerki] will share with you this evening his past and bring you up to speed on the present," he then played the "Money from Thin Air" video which misrepresented the potential of 800 MHz spectrum in the Expansion Band and Guard Band and misled investors regarding the use of this spectrum by major wireless carriers. Potential investors learned about these webinars through emails that Jones sent them. Following the webinar, Jones sent emails to potential investors reiterating his prior misrepresentations regarding the purported 800 MHz spectrum opportunity.

80. In addition, Jones hosted at least one live presentation to solicit

investors. Alcorn and Maerki attended the presentation and Maerki was the main presenter. Jones also solicited potential investors by sending a standard email describing the spectrum opportunity to a list of people with whom he had no prior relationship.

81. Potential investors received an offering document for the Premier Spectrum Group offering. Jones was the primary preparer of the offering document and, as founder and trustee of Premier Spectrum Group, Jones had ultimate authority over the offering document's content and whether and how to communicate that content to potential investors.

82. Investors purchased membership units in Premier Spectrum Group, a private membership association. Upon purchasing membership units, an investor became a member in the association. Investors were told that the private membership association would apply for and obtain FCC spectrum licenses through Janus Spectrum.

83. Many of the investors in Jones' offering were unsophisticated and thereby dependent on Janus Spectrum and Premier Spectrum Group's information and efforts to monetize the spectrum opportunity presented by Jones, Premier Spectrum Group, and Janus Spectrum.

84. Jones and Premier Spectrum Group engaged in multiple deceptive acts that furthered the fraudulent investment scheme. In addition to disseminating misleading information to investors, Jones transferred at least $55,000 in investor funds raised through Premier Spectrum Group to accounts he controlled, and concealed this information from investors. Jones paid himself approximately $47,160 in commissions and paid a salesperson approximately $8,400 in commissions. Jones also sent approximately $350,000 in investor funds to Janus Spectrum. Jones received undisclosed referral fees totaling $567,140 from Janus Spectrum for introducing other potential fundraising entities and persons, namely Daryl Bank, to the spectrum opportunity and to Janus Spectrum's services. These referral fees

further incentivized him to raise money and funnel investor funds to Janus Spectrum.

85. Jones knew, or was reckless or negligent in not knowing, that he committed deceptive acts in furtherance of the fraudulent scheme. Jones controlled the bank accounts into which he funneled investor funds and from which he paid himself substantial amounts.

86. During the relevant time period, Jones was the founder and trustee of Premier Spectrum Group; thus, his knowledge that he committed deceptive acts in furtherance of the fraudulent scheme is imputed to Premier Spectrum Group.

c. The Johnson/Chadwick Defendants' securities offerings

87. From December 2012 to October 2013, Johnson and Chadwick raised approximately $3,859,600 through at least three spectrum offerings of membership interests issued by Innovative Group, Premier Group, and Prosperity Group from 201 investors nationwide.

88. Johnson and Chadwick solicited potential investors by email and word of mouth. Johnson and Chadwick also held conference calls and hosted live presentations and in-person meetings with potential investors, some of which were attended by Alcorn and Maerki. The email invitations for these conference calls and presentations were sent to prior investors, but the emails encouraged the recipients to invite "anyone who might be interested." Jones, who was acquainted with Johnson and Chadwick, also solicited potential investors for Innovative Group.

89. Investors purchased membership interests in Innovative Group, Premier Group, or Prosperity Group, all private membership associations. Upon purchasing membership interests, an investor became a member in the association and would have a percentage ownership in the applications.

90. Similar to the investors in the other offerings, many of the investors in Johnson and Chadwick's offerings were unsophisticated and also dependent on Janus Spectrum and Innovative Group, Premier Group, and Prosperity Group's information and efforts.

91. Johnson, Chadwick, Innovative Group, Premier Group, and Prosperity Group engaged in multiple deceptive acts that furthered the fraudulent investment scheme. In addition to disseminating misleading information to investors, the Johnson/Chadwick Defendants transferred at least $103,459 and $93,024, respectively, to accounts they controlled, concealing those transfers from investors. Johnson and Chadwick also funneled approximately $2,785,000 in investor funds to Janus Spectrum. Johnson and Chadwick also received at least $260,000 in referral fees from Janus Spectrum for referring clients to Janus Spectrum, which further incentivized them to raise money and send investor funds to Janus Spectrum.

92. Johnson and Chadwick knew, or were reckless or negligent in not knowing, that they committed deceptive acts in furtherance of the fraudulent scheme. Johnson and Chadwick controlled the bank accounts into which they funneled investor funds and from which they paid themselves substantial amounts.

93. During the relevant time period, Johnson and Chadwick were the co-founders of Innovative Group, Premier Group, and Prosperity Group; thus, their knowledge that they committed deceptive acts in furtherance of the fraudulent scheme is imputed to their respective Fundraising Entities.

4. The Fundraising Entity Defendants' material misrepresentations and omissions

a. The Bank and Jones offering materials

94. Bank and Jones made misrepresentations and omitted material facts in Dominion Private Client Group's offering documents for the Janus Spectrum Group, Spectrum 100, and Prime Spectrum offerings and in Premier Spectrum Group's offering documents.

95. These entities did not use standard private placement memoranda. Instead, each offering had a short, approximately 20-page, offering document generally describing the investment opportunity.

96. Bank's entities, Dominion Private Client Group, Janus Spectrum Group,

Spectrum 100, and Prime Spectrum, used offering documents explaining that Dominion Private Client Group "has partnered with Janus Spectrum and its team" to apply for FCC spectrum licenses.

97. These offering documents falsely stated that "[t]oday this targeted 800 MHz Spectrum is among the most coveted Spectrum to wireless carriers....We anticipate ownership of this valuable, lower band spectrum will provide [Janus Spectrum Group, Spectrum 100, Prime Spectrum,] with opportunities for capital appreciation—as the value of spectrum rises over time; and, attractive income opportunities through a lease or joint-venture arrangement with one or more wireless service provider."

98. The offering documents that Jones used for the Premier Spectrum Group offering made a virtually identical misrepresentation.

99. Both Bank and Jones' offering documents, however, failed to disclose that Janus Spectrum was only applying for spectrum in the 800 MHz Expansion Band and Guard Band, which could not be used by major wireless carriers for their cellular systems.

100. Bank knew, or was reckless or negligent in not knowing, that the representations regarding the use of the 800 MHz spectrum were false and material information had been omitted, rendering the representations misleading. Bank developed suspicions and concerns about the investment based on Maerki's mismanagement of other offerings, lack of communication, and unwillingness to provide updates or answer questions. Bank had no basis upon which to represent that the 800 MHz spectrum was "coveted" by wireless carriers aside from Maerki's and Alcorn's representations. But Bank did not address his concerns and suspicions, choosing to continue marketing the spectrum licenses as profitable and to repeat misrepresentations in order to solicit investors.

101. Jones also knew, or was reckless or negligent in not knowing, that the representations regarding the use of the 800 MHz spectrum were false and material

information had been omitted, rendering the representations misleading. Jones received a number of questions from potential investors' asking about FCC rules limiting the ability of major wireless carriers to use 800 MHz spectrum in the Expansion Band and Guard Band. But he never conducted any follow-up research even though he realized such restrictions would be cause for concern and would "make a difference in the applications." Instead, he chose to continue soliciting investors with promises that the 800 MHz spectrum in the Expansion Band and Guard Band would be profitable because of its value to major wireless carriers. Jones even went so far as to promise investors "double-digit returns" based on the value of the 800 MHz spectrum in the Expansion Band and Guard Band.

102. Bank's and Jones' misrepresentations and omissions were material because investors considered the representation that major wireless carriers would lease or purchase the 800 MHz licenses from Janus Spectrum important in deciding whether to invest.

103. The offering documents of Bank, Jones and their respective entities also misrepresented how investor funds would be used.

104. Bank's offering documents falsely stated that the investor funds raised would be used for "the application and acquisition of the [FCC] applications and licenses." This representation was misleading because it failed to disclose that Bank kept a substantial portion of investor funds for his personal use. Specifically, he commingled investor funds with funds from his numerous other business ventures and used investor funds to pay himself and his salespeople undisclosed sales commissions ranging from twelve to sixteen percent.

105. Jones' offering documents falsely represented that "[e]ach membership unit includes the application, acquisition, and management of the FCC licenses," and Jones made a similar representation in his webinars. These representations were misleading because they failed to disclose that Jones used a portion of the investor funds raised to pay himself and his salesperson undisclosed commissions ranging

from twelve to fourteen percent.

106. Bank and Jones knew, or were reckless or negligent in not knowing, that the representations and omissions regarding the use of investor proceeds were false and misleading because they controlled the bank accounts into which their respective investor funds were deposited and thus knew that they kept a substantial portion of investor funds for personal use.

107. Bank's and Jones' misrepresentations and omissions regarding the use of investor proceeds were material because it was important to investors, when deciding whether to enter into an investment, to know that Bank and Jones kept a portion of investor funds and used them for purposes other than FCC license applications.

108. During the relevant time period, Bank was the owner and manager of Dominion Private Client Group, Janus Spectrum Group, Spectrum Management, Spectrum 100, Spectrum 100 Management, Prime Spectrum, and Prime Spectrum Management, and Jones was the owner and manager of Premier Spectrum Group; thus, Bank's and Jones' knowledge of the falsity of their representations is imputed to their respective entities.

b. Use of the "Money from Thin Air" video

109. Bank, Jones, Johnson, and Chadwick all used the materially false and misleading "Money from Thin Air" video to solicit investors.

110. Bank included the "Money from Thin Air" video as part of his video presentation on YouTube.

111. Jones sent links to the "Money from Thin Air" video in solicitation emails to investors, and he played the video during a webinar he conducted.

112. Johnson and Chadwick sent the "Money from Thin Air" video to potential investors.

113. Jones, Johnson, and Chadwick each knew, or were reckless or negligent in not knowing, that the representations in the video concerning the use of the 800 MHz license by major wireless carriers were false. Each of them ignored red flags

created by questions from investors and potential investors regarding the ability of major wireless carriers to use the 800 MHz spectrum.

114. Bank also knew, or was reckless or negligent in not knowing, that the representations in the video concerning the use of the 800 MHz license by major wireless carriers were false. Although Bank had developed suspicions and concerns about the investment based on Maerki's mismanagement of other offerings, lack of communication, and unwillingness to provide updates or answer questions, Bank did not address his concerns and suspicions and continued to market the spectrum licenses as profitable.

115. Bank's, Jones', Johnson's, Chadwick's and knowledge of the falsity of the representations in the video are imputed to their respective entities.

c. Solicitation emails sent by Jones, Johnson, and Chadwick

116. Jones, Johnson, and Chadwick also sent solicitation emails to investors which contained misrepresentations.

117. Jones solicited potential investors through emails that falsely claimed "[t]his particular opportunity has [a] **double-digit** return on Membership projected monthly within the next 24 months." (emphasis in original). The representation regarding "double-digit return" was false because the 800 MHz spectrum for which Janus Spectrum was applying could not be used by major wireless carriers to operate their cellular systems.

118. Johnson and Chadwick made misrepresentations and omitted material facts in emails to investors. In a solicitation email that went to potential investors in the Innovative Group offering, Johnson and Chadwick falsely stated "[a] little more detail on the 800mhz spectrum that is being released to the public via 02-55 here....Once re-banding is complete and the public notices go out and we receive our licenses, our plan is to go back to Sprint and negotiate a lease back to them." In this email, Johnson and Chadwick failed to disclose that 800 MHz spectrum in the

Expansion Band and Guard Band could not be used by major wireless carriers for their cellular systems.

119. In addition, in a recent email sent to an Innovative Group investor on November 14, 2014, Johnson and Chadwick falsely blame the lack of interest from major wireless carriers on the limited number of licenses received, stating, "[w]e are not getting interest from cell phone companies with only two markets. It is apparent that we need more licenses to get their attention. . . . Until then we have to manage and monetize them [as] best as possible as we acquire them."

120. Jones, Johnson, and Chadwick each knew, or were reckless or negligent in not knowing, that their representations and omissions were false. None of them investigated or researched the questions they received from investors and potential investors regarding the ability of major wireless carriers to use the 800 MHz spectrum. Yet, they all continued to solicit investors by claiming that the licenses would be leased or purchased by major wireless carriers.

121. Jones's, Johnson's, and Chadwick's knowledge of the falsity of their email representations are imputed to their respective entities.

C. Lack Of Securities Registration And Broker-Dealer Registration

122. During all relevant times, all of the offerings by the Fundraising Entities required the investment of money by investors who received a membership interest or membership unit upon investing.

123. Each of the Fundraising Entities then pooled investor money and investors shared ownership in an LLC or private membership association.

124. Many investors were unsophisticated and uninvolved in the FCC license application process. Janus Spectrum and the Fundraising Entities represented to investors that they would apply for the licenses and work to negotiate deals to monetize the licenses on behalf of investors. Moreover, the FCC license application process and the profitability of the licenses were dependent on the actions of the Defendants. Accordingly, investors were completely reliant on Janus Spectrum and

the Fundraising Entities for the investment's overall success.

125. During all relevant times, all of the Fundraising Entities' offerings each made use of the means or instrumentalities of interstate commerce or of the mails in connection with the transactions, acts, practices and courses of business alleged in this complaint.

126. Bank and his respective Fundraising Entities solicited investors through, among other things, a radio show that was aired on public radio stations and YouTube and a video presentation that was uploaded to YouTube.

127. Jones and Premier Spectrum Group solicited investors through, among other things, the entity's website (which was not password protected), webinars, and email.

128. Johnson, Chadwick and their respective Fundraising Entities solicited investors through, among other things, emails and conference calls.

129. During all relevant times, the Fundraising Entities' securities offerings were required to be registered under the securities laws. None of the Fundraising Entities' securities offerings had a registration statement in effect or on file; thus, these offerings were not registered.

130. All of the Fundraising Entities' securities offerings solicited investors nationwide. Many of the investors in each of the Fundraising Entities' offerings were unsophisticated and there were at least several unaccredited investors in each offering. The Bank Defendants, the Jones Defendants, and the Johnson/Chadwick Defendants took no steps to verify that investors were accredited.

131. Bank had common control over all of the issuers, Dominion Private Client Group, Janus Spectrum Group, Spectrum 100, and Prime Spectrum. Each issuer was engaged in the same type of business, offering membership interests and then using investor funds to try to obtain FCC spectrum licenses, and Bank disregarded entity form by using Dominion Private Client Group's name on each offering document. In addition, all of the offerings were a part of a single plan of

financing and for the same general purpose, which was to apply for FCC spectrum licenses through Janus Spectrum, they all sold the same type of securities, membership interests; the offerings overlapped for a period of time in 2013 and 2014; and all three received cash as consideration.

132. Johnson and Chadwick controlled Innovative Group, Premier Group, and Prosperity Group; each issuer was engaged in the same type of business, offering membership interests and then using investor funds to try to obtain FCC spectrum licenses; and Johnson and Chadwick disregarded entity form by commingling investor money. In addition, all three offerings sold the same type of securities, membership interests; the offerings occurred about the same time, overlapping in 2012 and 2013; and the same consideration, cash, was received from investors.

133. Janus Spectrum, Alcorn, Maerki, Bank, Jones, Johnson, and Chadwick were not registered as broker-dealers as required by the federal securities laws.

134. Janus Spectrum, Alcorn, Maerki, Bank, Jones, Johnson, and Chadwick acted as brokers because they actively solicited investors to purchase membership interests or units through one-on-one meetings, live presentations, video presentations, a radio show, conference calls, or email. They described the merits of investing in spectrum to potential investors or answered investor questions.

135. Alcorn, Maerki, Bank, Jones, Johnson, and Chadwick each received compensation from investor funds. Bank and Jones each personally received a percentage of assets invested; Bank received $1,339,681 or approximately sixteen percent, and Jones received $47,160 or approximately fourteen percent. Alcorn, Maerki, Johnson and Chadwick did not receive a fixed percentage of assets invested, but simply took investor funds for personal use. Each received at least the following: $514,996 - Alcorn; $867,665 - Maerki; $103,459 - Johnson; $93,024 - Chadwick. In addition, Jones received a $567,140 referral fee from Janus Spectrum that was based, at least in part, upon his referral of Bank to Janus Spectrum.

FIRST CLAIM FOR RELIEF

Violations of Sections 17(a) of the Securities Act

(Against All Defendants Except DAPC)

136. The SEC realleges and incorporates by reference paragraphs 1 through 129 above.

137. Defendants, by engaging in the conduct described above, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) employed devices, schemes, or artifices to defraud;

(b) obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

138. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

(Against All Defendants, and against DAPC as a control person)

139. The SEC realleges and incorporates by reference paragraphs 1 through 129 above.

140. Defendants, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

(a) employed devices, schemes, or artifices to defraud;

(b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

141. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a-c) thereunder [17 C.F.R. § 240.10b-5].

142. At all relevant times herein, DAPC was a control person of Janus Spectrum because it possessed, directly or indirectly, the power to direct or cause the direction of the management and policies of Janus Spectrum and exercised actual power and control over Janus Spectrum. Accordingly, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], DAPC is liable to the SEC to the same extent as Janus Spectrum would be liable for its respective violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 (a-c) thereunder [17 C.F.R. § 240.10b-5]

THIRD CLAIM FOR RELIEF

Violations of Sections 5(a) and 5(c) of the Securities Act

(Against All Defendants Except DAPC)

143. The SEC realleges and incorporates by reference paragraphs 1 through 129 above.

144. Defendants, by engaging in the conduct described above, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

145. No registration statement has been filed with the SEC or has been in effect with respect to any of the offerings alleged herein.

146. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

FOURTH CLAIM FOR RELIEF

Violations of Section 15(a)(1) of the Exchange Act

(Against Janus Spectrum, Alcorn, Maerki, Bank, Jones, Johnson, and Chadwick, and against DAPC as control person)

147. The SEC realleges and incorporates by reference paragraphs 1 through 129 above.

148. Defendants Janus Spectrum, Alcorn, Maerki, Bank, Jones, Johnson, and Chadwick, by engaging in the conduct described above, made use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security.

149. During the relevant time period, Defendants Janus Spectrum, Alcorn, Maerki, Bank, Jones, Johnson, and Chadwick were not registered as a broker or dealer.

150. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 15(a)(1) of the Exchange Act [15 U.S.C. §§ 78o(a)(1)].

151. At all relevant times herein, DAPC was a control person of Janus Spectrum because it possessed, directly or indirectly, the power to direct or cause the direction of the management and policies of Janus Spectrum and exercised actual power and control over Janus Spectrum. Accordingly, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], DAPC is liable to the SEC to the same extent as Janus Spectrum would be liable for its respective violation of Section 15(a)(1) of the Exchange Act [15 U.S.C. §§ 78o(a)(1)].

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PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Defendants committed the alleged violations.

II.

Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining Defendants, and their agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), 77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78t(a)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

III.

Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining Defendants Janus Spectrum, Alcorn, Maerki, Bank, Jones, Johnson, and Chadwick, and their agents, servants, employees, and attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 15(a)(1) of the Exchange Act [15 U.S.C. §§ 78o(a)(1)].

IV.

Order Defendants to disgorge all funds received from their illegal conduct, together with prejudgment interest thereon.

VI.

Order Defendants to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

VII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated this 4TH day of February 2016

Respectfully submitted,

/s/ Donald W. Searles
Donald W. Searles
David J. VanHavermaat
Sana Muttalib
Attorneys for Plaintiff
Securities and Exchange Commission

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION,
444 S. Flower Street, Suite 900, Los Angeles, California 90071,
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On February 4, 2016, I caused to be served the document entitled **FIRST AMENDED COMPLAINT** on all the parties to this action addressed as stated on the attached service list:

☒ **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

☐ **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

☐ **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

☐ **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

☒ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

☒ **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

☐ **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: February 4, 2016

/s/ Donald W. Searles
Donald W. Searles

SEC v. Janus Spectrum LLC, et al.
United States District Court – District of Arizona
Case No. 2:15-CV-00609-PHX-SMM
(LA-4280)

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Complaints and Other Initiating Documents

2:15-cv-00609-SMM United States Securities and Exchange Commission v. Janus Spectrum LLC et al

STAY-BK,STD

U.S. District Court

DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered by Searles, Donald on 2/4/2016 at 7:39 PM MST and filed on 2/4/2016

Case Name: United States Securities and Exchange Commission v. Janus Spectrum LLC et al
Case Number: 2:15-cv-00609-SMM
Filer: United States Securities and Exchange Commission
Document Number: 105

Docket Text:
AMENDED COMPLAINT *(First)* against All Defendants filed by United States Securities and Exchange Commission.(Searles, Donald)

2:15-cv-00609-SMM Notice has been electronically mailed to:

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2:15-cv-00609-SMM Notice will be sent by other means to those listed below if they are affected by this

filing:

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The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1096393563 [Date=2/4/2016] [FileNumber=14500751-0
] [1024338a79b16cd92a6aae9aa550235f42381ab2f462ddee7603f1707c7780b399e
659256deb3a5495da19dc1b92e3e2fc96e41cf2c11f8ad2c079bdfe04fe50]]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Securities and Exchange Commission, Plaintiff, v. Janus Spectrum LLC, et al., Defendants.	No. CV-15-609-PHX-SMM **ORDER**

The Plaintiff, Securities and Exchange Commission ("SEC"), initiated this lawsuit alleging that Defendants Janus Spectrum LLC, David Alcorn, David Alcorn Professional Corporation, Kent Maerki, Bobby Jones, Premier Spectrum Group, PMA, and other individual defendants and their associated fundraising entities,[1] are responsible for planning and operating an investment scheme to apply for, obtain, and monetize Federal Communication Commission ("FCC") spectrum licenses that Alcorn and his accomplice, Maerki, and the other Defendants knew or should have known had little value. (Doc. 105.) The SEC has filed motions for summary judgment against Defendants Janus Spectrum LLC,

[1] All other named Defendants, both individual and fundraising entities, have filed their notices of settlement consent with the Court and Judgment has been entered against them: Defendants Daryl G. Bank; Dominion Private Client Group, LLC; Janus Spectrum Group, LLC; Spectrum Management, LLC; Spectrum 100, LLC; Spectrum 100 Management, LLC; Prime Spectrum, LLC; Prime Spectrum Management, LLC; Terry W. Johnson; Raymon G. Chadwick, Jr.; Innovative Group, PMA; Premier Group, PMA; and Prosperity Group, PMA. (See Docs. 107-111 and 228-235.) Collectively, the fundraising entities under the individual Defendants will be referred to as "Fundraising Entities").

David Alcorn, David Alcorn Professional Corporation, Kent Maerki, Bobby Jones, and the Premier Spectrum Group, PMA. (Docs. 189, 191.)

Currently before the Court is SEC's Motion for Summary Judgment against Defendants Janus Spectrum, LLC ("Janus Spectrum"), David Alcorn ("Alcorn"), David Alcorn Professional Corporation ("DAPC") and Kent Maerki ("Maerki"). (Doc. 191.) In support, the SEC submits its Statement of Facts (Doc. 192) and the supporting Declarations of Sana Muttalib, Lorraine Pearson, Coleman Bazelon, and David Van Havermaat, along with the submitted evidence of record. (Docs. 137-161, 193, and 211-213.)

Defendants Janus Spectrum, Alcorn and DAPC filed their response to the SEC's motion for summary judgment (the "Alcorn Defendants"). (Doc. 204), In support, Janus Spectrum, Alcorn and DAPC submitted their Controverting Statement of Facts (Doc. 205) and the supporting Declarations of Jack "Tripp" Forest and David Alcorn (Docs. 206, 207). Defendant Maerki did not file any opposition to the SEC's motion for summary judgment. (Doc. 218.) Subsequently, Janus Spectrum, Alcorn and DAPC filed a revised response to the SEC's motion for summary judgment. (Docs. 209, 210.) The SEC then filed its Reply. (Doc. 216.)

The Court has reviewed and considered all of the pleadings and finds that the SEC is entitled to summary judgment against Defendants Janus Spectrum, Alcorn, DAPC, and Maerki.[2]

I. BACKGROUND

Initially, the Court must resolve Defendant Maerki's failure to respond to the SEC's motion for summary judgment. (Doc. 218.) Under Fed. R. Civ. P. 56, Defendant Maerki's failure to respond to the SEC's assertions of fact permits the Court to "consider the fact[s] undisputed for purposes of the motion" and to grant summary judgment "if the motion,

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[2]The request for oral argument is denied because the parties have had an adequate opportunity to present their written arguments, and oral argument will not aid the Court's decision. See Lake at Las Vegas Investors Grp., Inc. v. Pacific Malibu Dev., 933 F.2d 724, 729 (9th Cir. 1991).

including the facts considered undisputed, show that the movant is entitled to it." Fed. R. Civ. P. 56(e)(2); Heinemann v. Satterberg, 731 F.3d 914, 917 (9th Cir. 2013) (stating that the 2010 revisions to Rule 56 "prohibit the grant of summary judgment by default even if there is a complete failure to respond to the motion."). Consequently, the Court will consider the SEC's properly filed statement of facts in this matter (Doc. 192), as undisputed against Maerki. See Fed. R. Civ. P. 56(e).

A. Spectrum Overview

The FCC regulates wireless communications; it oversees the various frequencies that comprise the country's available wireless capacity or spectrum. (Docs. 89-10, 192 at 3.) The FCC issues licenses to own and use various frequencies throughout the country. (Doc. 89-10.) In 2004, the FCC adopted a plan to reconfigure the 800 MHz wireless spectrum band. (Docs. 89-10, 138, and 161 at 9-10.) Public safety operations were moved to the lower portion of the 800 MHz band and commercial wireless systems were moved to the higher portion of the band. (Docs. 89-10, 161 at 9-10.) As part of its plan, the FCC designated the expansion band and guard band to maintain separation between public safety and cellular operations on the 800 MHz band. (Id.)

FCC rules specify that a license using either the expansion band or the guard band is only authorized to use a maximum bandwidth of 20 kHz. (Docs. 192 at 4, 89-11.) Major wireless carriers require a minimum bandwidth of 1.25 to 1.4 MHz. (Id.) It is undisputed that major wireless carriers could not operate their cellular services on the 800 MHz expansion band or guard band because those cellular services would not fit within the FCC's authorized maximum bandwidth of 20 kHz. (Id.) For instance, regarding the use of the FCC spectrum licenses in the guard and expansion band, Defendants were repeatedly warned in trade articles, in conversations with Sprint, and by their own advisors, that their underlying business model of leasing the FCC spectrum back to Sprint could not succeed. (Doc. 192 at 18-22.)

B. Janus Spectrum Business Model

Janus Spectrum operated as a business seeking to apply, obtain, and resell FCC

licenses in the expansion and guard band. (Docs. 89-13, 192 at 5-7.) Janus Spectrum prepared applications for FCC cellular spectrum licenses on behalf of third-party clients, Defendant Fundraising Entities. (Docs. 192 at 5-7.) Janus Spectrum referred to the fundraising entities as "clients." (Doc. 89-13.) These application services included working with third parties, such as engineers and attorneys, to prepare and file spectrum applications with the FCC for 800 MHz spectrum licenses in the expansion and guard band. (Docs. 89-13; 97-3 at 1-7; 161 at 1-31, 63-66.) In addition to offering license application services, Janus Spectrum also offered to manage and monetize any spectrum licenses that would be granted by the FCC to its clients.[3] (See, e.g., Docs. 89-13, 97-3, 139-3, 142-4).

During the period at issue, 2011-2015, Janus Spectrum used three successive versions of agreements with its clients. (Id.) Under the original version of its "broker services agreement," paragraph 7 provided that Janus Spectrum was appointed to act as the client's exclusive agent to manage and monetize the spectrum licenses, for which it would receive an 18% "transaction fee" or commission on any such transaction. (Id.) This 18% profit sharing provision was in addition to the payment of an upfront non-refundable $40,000 license application fee charged by Janus Spectrum. (Id.)

Subsequently, Janus Spectrum revised its original broker services agreement, in part, to delete paragraph 7, and for its existing clients to execute a new version of Janus Spectrum's services agreement entitled Commercialization Agreement. (Docs. 97-3, 139-3.) The revised agreement deleted paragraph 7. (Doc. 139-3 at 1.) However, Janus Spectrum was

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[3]Janus Spectrum, Alcorn and DAPC contend that they subsequently revised their contracts with clients withdrawing the provision that Janus Spectrum would broker a subsequent sale or to help clients monetize an acquired license. (Doc. 210 at 3-4.)

The record is clear that Janus Spectrum was more than simply a license application services company. (See Doc. 216 at 6-7.) Alcorn's testimony confirms this status. (Doc. 152-9) (Alcorn testifying that under the original services agreement, licenses would be managed and monetized by Janus Spectrum and that under the revised services agreement clients would continue to use Janus Spectrum in an attempt to monetize and manage the licenses). In an email, Alcorn further confirmed that the message should be clear that Janus Spectrum is the best qualified to manage client's licenses. (Doc. 142-3.)

still appointed to act as the client's exclusive agent in connection with any sale or lease of the spectrum licenses, and Janus Spectrum retained an 18% profit sharing interest in the management and monetization of spectrum licenses, in the form of a commission. (Doc. 139-3.) Janus Spectrum and its clients continued to expect that Janus Spectrum would be responsible for the management and monetization of the spectrum licenses under the revised agreement. (Doc. 192 at 7.)

The Commercialization Agreement was again subsequently amended. (Doc. 149-2.) The revised agreement deleted Janus Spectrum's 18% profit sharing interest. (Id.) Notwithstanding the revisions to Janus Spectrum's agreements with its clients, Janus Spectrum's clients continued to look to Janus Spectrum to manage and monetize the licenses. (See, e.g., Docs. 154-5 at 15-17, 25-26, 31-38; 192 at 6.)

Under all these various agreements, Janus Spectrum received from approximately 325 nationwide investors, including the Fundraising Entities, spectrum license application fees totaling $9,242,167. (Doc. 185 at 9-10.)

C. Fundraising Entities

The fundraising entity under Judgment Defendant Bobby Jones ("Jones") was Premier Spectrum Group, PMA ("PSG"). Under Judgment Defendant Daryl Bank ("Bank") were Dominion Private Client Group, LLC; Janus Spectrum Group, LLC; Spectrum Management, LLC; Spectrum 100, LLC; Spectrum 100 Management, LLC; Prime Spectrum, LLC; and Prime Spectrum Management, LLC. Under Judgment Defendants Terry Johnson ("Johnson") and Raymon Chadwick ("Chadwick") were Innovative Group, PMA; Premier Group, PMA; and Prosperity Group, PMA.

1. Judgment Defendant Bobby Jones

Jones formed Premier Spectrum Group in January 2013. (Docs. 137-3, 145.) Prospective investors received the Articles of Association for Premier Spectrum Group and the Texas Joint-Stock Company (Bearer Shares) of Premier Spectrum Management before investing with Premier Spectrum Group. (Docs. 138-6, 138-7.) Jones drafted a document entitled "Membership Fee Offering, Presented Exclusively By Premier Spectrum Group, a

Private Membership Association" that was sent to prospective investors. (Docs. 137-3, 212-4 at 6-7.) Among other things, the offering materials described the opportunity for its members to obtain significant profits resulting from the acquisition and monetization of "valuable" FCC spectrum. (Doc. 137-3.) The materials stated that "Premier Spectrum Group has a strategic alliance with channel partners whose staff members, in the late 1980s, helped investors take advantage of a similar, little-recognized opportunity to acquire FCC licenses. The value of the combined spectrum acquired by those investors for $75 million back in the 1980s is today worth greater than $3.6 billion – a 48 time return on investment." (Id. at 7.) The materials asserted that an opportunity presently exists to file and own valuable spectrum in the top 100 largest markets in the U.S., including New York, Washington, DC, and Chicago, IL. (Id.) "This spectrum is in close proximity to spectrum for which AT&T and Verizon paid nearly $17 billion in 2008; it is these channels on which both carriers are building out their modern LTE networks." (Id.) "Today, this targeted 800 MHz Spectrum is among the most coveted spectrum to wireless carriers. The wireless industry has already acknowledged that future mobile broadband connections will run over this lower band spectrum. We anticipate ownership of this valuable, lower band spectrum will provide Premier Spectrum Group with opportunities for increases as the value of spectrum rises over time, and attractive income opportunities through a lease or joint-venture with one or more wireless service providers." (Id.)

The offering stated that "Premier Spectrum Group will apply for 5 channels in each of the 25 largest Economic Area Markets, for a total of 125 channels." (Id. at 8.) The offering materials further stated that "Revenue is forecasted to begin within approximately 24 months" (id. at 10), and contained a section entitled "our team," describing Alcorn and Maerki, and referring to Maerki as a "recognized icon in the wireless industry." (Id. at 13.)

In all, Jones's fundraising entity, PSG, raised a total of $407,050 from 13 nationwide investors. (Doc. 157 at 23.) Of that amount, it sent $350,000 to Janus Spectrum. (Id. at 6, 9.) In addition, Jones received, in his capacity as trustee of the "Because He Lives" trust, $567,140 in commissions or finders fees from Janus Spectrum for referring other investors.

(Id. at 7.)

Jones made no effort to determine whether his investors in PSG were accredited investors. (Doc. 192 at 9.) Other than paying for the license applications, Jones did not expect investors to do any additional work. (Id.) Investor funds in PSG were pooled and used to purchase ten license applications from Janus Spectrum for $40,000 each. (Id.) The licenses are still not available for the geographic areas of PSG's applications; PSG has yet to acquire or monetize, any spectrum licenses. (Id.) Pursuant to the terms of the broker services agreement between Janus Spectrum and PSG, Janus Spectrum would have had a managerial role in monetizing any licenses that would be awarded to PSG. (Id.)

2. Judgment Defendant Daryl Bank, et al.

Prospective investors in Bank's fundraising entities, Janus Spectrum Group, LLC, Spectrum 100, LLC, and Prime Spectrum, LLC, received an Operating Agreement and an Investment Offering and Investment Summary. (Docs. 192 at 7-8, see also 144-2 thru 144-4.) Each Operating Agreement provides that the respective fundraising entity has been formed for the purpose of acquiring and monetizing 800 MHz Specialized Mobile Radio ("SMR") and 900 SMR licenses, and that their respective management companies would "have complete power and authority for the management and operation of the Company's assets and business." (See, e.g., Doc. 144-2.) On the cover page, the Investment Summary document for Prime Spectrum, LLC acknowledged that its offering was a "security" but claimed that it was "exempt from SEC registration." (Doc. 144-7.) The investors in Bank's entities never exercised voting power with respect to any activities of the entities, and their participation was entirely passive. (Doc. 192 at 7-8.)

The "Investment Offering" and "Investment Summary" documents further stated that Dominion Private Client Group, LLC had partnered with Janus Spectrum to offer investors with opportunities to achieve a 100% annual preferred return on invested capital plus 50% of additional profits, derived from anticipated revenues resulting from the acquisition and monetization of valuable FCC spectrum licenses. (Docs. 144-6, 144-7.) These documents included projections of monthly cash flow from licenses in the top 100 economic areas in the

United States and projected annual returns on investment ranging over 1000% depending on the economic area. (Id.) The Investment Offering and Investment Summary documents also stated that acquisition costs for each license ranged from $100,000 to $125,000, depending on the fundraising entity. (Id.)

These documents also described the Janus Spectrum team, including profiles of Alcorn and Maerki, which described Maerki as being "recognized as an icon in the wireless industry" and had been a managing partner of The Cellular Corporation, where Maerki and his clients "invested $75 Million in an FCC lottery and was awarded spectrum that is currently valued at $3.6 Billion." (Doc. 144-6 at 15.)

Bank's entities sent to prospective investors one-page "opportunity alerts" that stated that "Dominion Private Client Group, LLC has partnered with Janus Spectrum and its team who, in the late 1980s, helped investors take advantage of a little recognized opportunity to acquire FCC licenses." (Docs. 139-9, 140-1.)

In all, Bank and his fundraising entities raised $8,359,400 from 111 nationwide investors. Of that total amount, Bank sent $3,864,500 to Janus Spectrum. (Doc. 157 at 14.)

3. Judgment Defendants Johnson and Chadwick

Johnson and Chadwick solicited investors to join a "private membership association" ("PMA") in which each investor would become a member and would own a percentage interest in each spectrum license held by the association based on the amount of their investment. (Docs. 192 at 8-9; see also 138-5.) Members in the Johnson and Chadwick entities received a copy of their respective entities' "articles of association." (See, e.g., Doc. 138-5.) Johnson and Chadwick also provided to their members a copy of the broker services agreement between Janus Spectrum and the PMA. (Docs. 139-2, 139-3.) The purpose of each PMA was to apply for 25 licenses in the expansion band or guard band through Janus Spectrum.(Doc. 153-9 at 23.) Johnson later admitted at his deposition that the agreements Innovative Group, Premier Group and Prosperity Group had with their members were "securities" under the three-part test laid out in SEC v. W.J. Howey Co., 328 U.S. 293 (1946). (Id. at 4-6.)

Johnson and Chadwick charged their members $62,500 per spectrum license application, even though Janus Spectrum only charged Johnson's and Chadwick's entities $40,000 per application. (Id. at 8.) To conceal their "commissions" from their investors, Johnson and Chadwick obtained a "commission side letter" from Alcorn, in order to have a receipt that they could show to their investors, showing they had sent $61,500 to Janus Spectrum, rather than $40,000. (Docs. 139-7, 192 at 9.)

In all, Johnson and Chadwick raised $3,859,580, from a total of 201 nationwide investors, which funds were pooled to purchase license applications. (Doc. 157 at 22-23.) All of those funds were raised before February 1, 2014. Of that total amount, $2,785,000 was sent to Janus Spectrum. (Id.) In addition, Johnson and Chadwick received, through their control of the Integrity Group bank account, $260,000 in commissions or finders fees from Janus Spectrum. (Id. at 23.)

D. Roles of Defendants Janus Spectrum, Alcorn, DAPC, and Maerki

The SEC has filed a very lengthy evidentiary record in support of the spectrum license scheme that Defendants orchestrated against the investors and potential investors. (Docs. 137-161, 184-188, 211-213.) Alcorn and Maerki, through Janus Spectrum, were the orchestrators of the scheme.

Alcorn is the president of David Alcorn Professional Corporation, DAPC, which became the sole owner of Janus Spectrum as of January 2014. (Docs. 128, 152-8.) Prior to January 2014, DAPC held a 55% ownership interest in Janus Spectrum. (Id.)

Alcorn and Maerki, through presentations, webinars, emails, in-person meetings, phone calls, conference calls, and radio shows, made representations to potential clients and investors in the Fundraising Entities about the characteristics and benefits of acquiring FCC spectrum licenses. (Docs. 192 at 11.) Alcorn and Maerki represented the use of such licenses, the expected returns on investing in spectrum licenses, the lack of risk and passive nature of the investment, the urgency in filing license applications, the associated application fees, and the experience of the Janus Spectrum's principals. (Id.)

Maerki created the audio-video presentations entitled "Educational Preview About

Airwaves Presentation" and "Money from Thin Air." Alcorn and Maerki provided these presentations to Bank, Jones, Johnson, and Chadwick for their use in soliciting investors. (Docs. 192 at 11, 137-5, 216 at 8 n.5.) Alcorn created a "*pro forma*" estimate of the value of licenses in the expansion and guard bands in the top 25 economic areas and forwarded it to Jones, Bank, Johnson, and Chadwick for their use in soliciting investors. (Doc. 192 at 13.) Alcorn estimated annual returns ranging up to 3373% depending on the economic area, and an average annual return from all 25 economic areas of 298%. (Id.)

In his "Money from Thin Air" presentation, Maerki claimed: "It's a work free business. It really is a work free business. It is ownership of spectrum. It has very high income historically. It has very low risk, hardly any.. .It's work free, there is just nothing to do. You look at your tower, you don't see anything happening, you go home." (Doc. 137-5 at 18.) He also referred to the opportunity to own spectrum that was "high demand spectrum that is already in use with current income streams." (Id. at 20.) Maerki also stated that "demand for 600,700, 800, and 900 MHz spectrum is the most efficient out there. That is what we are talking about today, those are the Rolls Royce of spectrum." (Id. at 25.)

Maerki further claimed explained that "Sprint or somebody [like] them" does not want to lose their capacity and would "probably lease it back [from] you and pay you $4,800 a month." (Doc. 137-5 at 34.) Maerki continued, "Sprint is going to need [the 800 MHz spectrum] . . . But if they don't take it, AT&T needs it, and so does Verizon. More importantly T-Mobile really needs it. So do the other ones." (Id. at 34-35.)[4] Maerki also explained the expected revenues that could be realized from owning spectrum licenses: "They have 360 channels in that area, dividing that into the million, they're making about

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[4]Contrary to the claims of the Alcorn defendants, Andrew Seybold (Docs. 154-7, 212-10), Jack Tripp Forrest (Docs. 153-5, 211-10, 212), Peter Lewis (Docs. 154-2, 212-6), and Peter Moncure (Docs. 213-4, 146-2, 146-3), all agreed that spectrum in the expansion and guard bands could not be used by the major wireless carriers. Another Alcorn Defendants' witness, Alan Tilles, stated that "There will be at some point a way to apply for these frequencies. The better question is why would you apply for them." (Docs. 145-8, 152-9 at 25-27.) In March 2012, Tilles also told Alcorn that "There's NO spectrum below 861 MHz (and above 851 MHz) that can be used for any kind of broadband." (Doc. 151.)

$3,000 a channel. Your license in that area, should you select to be in that area, would be for four channels times $3,000 or $12,000 a month. Wow." (Id. at 34.) Maerki continued: "In summary, let's put it this way. There is a limited number of available licenses. Of course, it's on a first come/first serve basis, very unique income stream opportunity, own somebody else's income stream that they have to give up. Very low risk, As a result, very high income. Small investment, high value, certainly work free . . . How long before I make money? We have discussed that, a year or two years unless it's a border, two to five years. Why isn't everyone doing this? Simply, they haven't learned about it yet . . . Urgency? Yes. First come/first serve. These will be gone in three to five months." (Id. at 35-37.) At the end of his "Educational Preview About Airwaves Presentation," Maerki explained to investors that "over 50 percent of the spectrum available as a result of what I have just described has already been applied for. This is very limited, so please get more information quickly." (Id. at 12.)

In an effort to recruit additional investors, Alcorn sent an email to Jones and Johnson, copying Maerki and others, stating that "Kent [Maerki] and I are open for suggestions on how we can help our people energize their individual and group "Operation Market Thrust." (Doc. 141-1.) Alcorn continued, "We are prepared to throw any amount of time and resources your way to help." (Id.) Alcorn also stated, "Keep in mind, the "Icon" [Kent Maerki] is not only willing to address your people but eager to do so. I personally have now witnessed him doing these over and over and with consistent and positive results. Never has there been a presentation that did not create sales. Use all your tools! Let us know how we can help you!!!" (Id.)

Alcorn spoke with a person in the legal department at Sprint and was told that Sprint would not have an interest in Janus Spectrum's licenses and that Sprint was forbidden from buying them. (Doc. 192 at 21.)

Alcorn also assisted Bank in creating Bank's "pitch book," reviewed Bank's offering materials, and provided Bank with a list of potential investors who had contacted Janus Spectrum. (Doc. 143-3, 147, 151-7, 192 at 13.) Alcorn was also aware that Bank was pooling

investors' monies to acquire licenses from Janus Spectrum. (Id.)

Alcorn and Maerki attended an event hosted by Jones to solicit investors for PSG. Maerki told attendees, "We have two of our licenses. We will have more and ultimately we will have all 25. Everybody will have their licenses. . . . If you hire us, we will go talk to Sprint and make a deal. That's what we can guarantee. We can't guarantee anything else." (Doc. 138-1 at 40.) At the same meeting, Alcorn told an investor, "The most likely user will be Sprint but the market is very deep." (Doc. 152-8 at 21.)

Alcorn and Maerki held a conference call with clients and prospective clients offering 30% commissions and discussed using a private placement memorandum in soliciting investors. (Docs. 137-9, 192 at 14.) Maerki knew that Bank was using the "Money From Thin Air" video to solicit investors as he had given Bank permission to use it. (Doc. 192 at 14.) Maerki also sent a PowerPoint presentation and a revised version of the "Money from Thin Air" video to Jones. (Id.) Maerki also advised Jones, Johnson and Chadwick on how they should set up their respective fundraising entities. (Id.)

II. STANDARD OF REVIEW

Summary Judgment

"A party may move for summary judgment, identifying each claim or defense–or the part of each claim or defense–on which summary judgment is sought." Fed. R. Civ. P. 56(a). A court must grant summary judgment if the pleadings and supporting documents, viewed in the light most favorable to the nonmoving party, show "that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Id.; see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Jesinger v. Nevada Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). Substantive law determines which facts are material. See Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986); see also Jesinger, 24 F.3d at 1130. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248. The dispute must also be genuine, that is, the evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." Id.; see Jesinger, 24 F.3d at 1130.

A principal purpose of summary judgment is "to isolate and dispose of factually unsupported claims." Celotex, 477 U.S. at 323-24. Summary judgment is appropriate against a party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322; see also Citadel Holding Corp. v. Roven, 26 F.3d 960, 964 (9th Cir. 1994). The moving party need not disprove matters on which the opponent has the burden of proof at trial. See Celotex, 477 U.S. at 323. The party opposing summary judgment may not rest upon the mere allegations or denials of the party's pleadings, but must set forth "specific facts showing that there is a genuine issue for trial." See Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56(e) (1963) (amended 2010)); Brinson v. Linda Rose Joint Venture, 53 F.3d 1044, 1049 (9th Cir. 1995). The non-movant's bare assertions, standing alone, are insufficient to create a material issue of fact and defeat a motion for summary judgment. Anderson, 477 U.S. at 247-48.

III. DISCUSSION

A. SEC's Section 5 Securities Allegations Against Janus Spectrum, Alcorn and Maerki

Based on the material evidence presented, the SEC alleges that it is entitled to summary judgment on its claim that Janus Spectrum, Alcorn and Maerki violated Section 5 of the Securities Act, 15 U.S.C. § 77e(a) and (c) ("Section 5"), by selling securities without the required prior registration. (Doc. 191 at 11-14.) The SEC alleges that Janus Spectrum, Alcorn and Maerki are liable both for (1) Janus Spectrum's offer and sale of securities, and (2) as substantial participants in each Fundraising Entity's offer and sale of securities. (Id. at 11.)

Janus Spectrum and Alcorn contend that they did not offer services to the public at large or manage a business which managed people's investments; they offered services for a fee to license applicants who applied to the FCC to be the exclusive owners and builders of certain spectrum licenses. (Doc. 210 at 3.) Janus Spectrum and Alcorn contend that they did not sell securities, and, consequently, the registration requirements of the Securities Act are not required. (Id.) Alcorn further states he had no reason to believe that Janus Spectrum

was involved in the sale of securities because while he was associated with Smartcomm, he was informed that the SEC had investigated that entity, and its similar business model, and found no action necessary. (Id. at 5.) As to the SEC's substantial participant allegation, Janus Spectrum/Alcorn disputes causation, asserting that it was Maerki who orchestrated the events relied upon by the SEC. (Id. at 13.)

The SEC replies that the "success of the venture" was dependent on Janus Spectrum's ability to sell or lease the spectrum back to Sprint or to another major wireless carrier, as opposed to simply preserving the license for some indeterminate future use. (Doc. 216 at 7.) The SEC cites Alcorn's testimony in support of its argument that Alcorn and Maerki were both "a necessary participant and substantial factor" in each Fundraising Entity's offering and sale of securities. (See Doc. 216 at 8 n.5) (Alcorn testifying that he offered to help Bank improve his business with Janus Spectrum and offered to review Bank's offering materials; that Alcorn reviewed and edited "Money From Thin Air" while at Janus Spectrum; that Alcorn created and used pro forma financial projections when speaking with clients and prospective clients; that Alcorn and Maerki sent both the "Educational Preview About Airwaves" and "Money From Thin Air" videos to potential investors and to Bank, Jones, Johnson and Chadwick for their use in soliciting investors).

1. Fundraising Entities' Offerings Were Securities

The Court first finds that the membership interests that Jones, Johnson, and Chadwick sold to investors for the purchase of FCC spectrum licenses were securities. (Doc. 192 at 8-11.) Additionally, the Court finds that the agreements that Bank made with his investors, including the Operating Agreement, Investment Offering, and Investment Summary, were securities. (Id. at 7-8.)

Under both the Securities Act, 15 U.S.C. § 77b(a)(1), and the Exchange Act, 15 U.S.C. § 78c(a)(10), a security is defined as, among other things, an investment contract. The showing of an investment contract is established by: (1) an investment of money; (2) in a common enterprise, evidenced by either horizontal or vertical pooling; (3) with an expectation of income or profits to be derived solely from the efforts of the promoter or a

third party. See SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946); SEC v. Rubera, 350 F.3d 1084, 1090 (9th Cir. 2003).

a. Investment of Money

The investment of money prong requires that the investor commit his assets to the enterprise in such a manner as to subject himself to financial loss. See Rubera, 350 F.3d at 1090.

Jones drafted the document entitled "Membership Fee Offering, Presented Exclusively by Premier Spectrum Group, a Private Membership Association." (Docs. 192 at 7, 137-3.) The "Membership Fee Offering" was sent to potential investors, soliciting the opportunity to acquire and monetize allegedly valuable FCC licenses. (Doc. 137-3.) The "Membership Fee Offering" for PSG further stated that "Revenue is forecasted to begin within approximately 24 months." (Id.) PSG purchased ten license applications from Janus Spectrum in 2013 for $40,000 each. (Doc. 192 at 9.) In all, Jones through PSG raised a total of $407,050 from 13 nationwide investors, which was pooled to invest in FCC spectrum licenses. (Id.)

Bank forwarded to potential investors documents entitled "Investment Offering" and "Investment Summary." (Docs. 144-6, 144-7.) These documents state that Dominion Private Client Group, LLC had partnered with Janus Spectrum to offer investors with opportunities to achieve a 100% annual preferred return on invested capital plus 50% of additional profits, derived from anticipated revenues resulting from the acquisition and monetization of valuable FCC spectrum licenses. (Id.) These documents included projections of monthly cash flow from licenses in the top 100 economic areas in the United States and projected annual returns on investment ranging over 1000% depending on the economic area. (Id.) The Investment Offering and Investment Summary documents also stated that acquisition costs for each license ranged from $100,000 to $125,000, depending on the fundraising entity. (Id.) In all, Bank and his fundraising entities raised $8,359,400 from 111 nationwide investors. Of that total amount, Bank sent $3,864,500 to Janus Spectrum. (Doc. 157 at 14.)

In order to avoid the application of securities laws, Maerki advised Jones, Johnson,

and Chadwick to use a "private membership association" ("PMA") instead of an LLC. (Docs. 149-4, 153-9.) Consequently, Johnson, Chadwick, and Jones solicited investors to join a PMA in which each investor would become a member and own a percentage interest in each spectrum license held by the association based on the amount of their investment. (Docs. 192 at 8-9; see also 138-5.) Members in the Johnson and Chadwick entities received a copy of their respective entities' "articles of association." (Id.) Johnson and Chadwick promised investors that the PMA would apply for spectrum licenses in each of the top 25 wireless economic areas through Janus Spectrum, projecting a monthly return of 85%. (See. e.g., Docs. 149-5, 139-8.) In all, Johnson and Chadwick raised $3,859,580, from a total of 201 nationwide investors, which funds were pooled to purchase license applications. (Doc. 157 at 22-23.)

b. Common Enterprise

The Ninth Circuit recognizes traditional horizontal commonality where pooling is present. See Hocking v. Dubois, 885 F.2d 1449, 1459 (9th Cir. 1989) (*en banc*). In horizontal commonality, the investors pool their assets in return for a *pro rata* share of the profits of the common enterprise. Id. Vertical commonality requires that the investor and the promoter, seller, or other party be involved in some common venture. Brodt v. Bache & Co., 595 F.2d 459, 461 (9th Cir. 1978).

Here, horizontal commonality is present as Jones, through PSG, Banks, through his numerous fundraising entities, and Johnson/Chadwick all pooled investors' funds to allow them to purchase packages of license applications from Janus Spectrum for $40,000 each (Johnson/Chadwick charging $62,500 each). (Doc. 192 at 7-11.) Moreover, vertical commonality is also satisfied. The fundraising entities of Jones, Bank, and Johnson/Chadwick all depended on Janus Spectrum to prepare, file, and obtain FCC spectrum licenses for the investors. (Id.)

c. Expectation of Profits Produced by Others

The third element of the Howey test requires that the investor be led to expect profits solely from the efforts of others. Rubera, 350 F.3d at 1091-92; see also SEC v. Comcoa, 855

F. Supp. 1258, 1261-62 (S.D. Fla. 1994) (finding defendants' offering of spectrum license application services constituted a security under Howey, where investors were dependent on Comcoa for obtaining and leasing licenses).

Here, this element of Howey is also satisfied because the investors always looked to and expected that Janus Spectrum would prepare, file, and obtain FCC spectrum licenses for the investors, as well as manage and monetize the licenses obtained. (Docs. 192 at 7-11; 142-3; 142-10; 152-9 at 19-20, 48-49, 55-56.)

Thus, the undisputed facts establish that Jones's, Bank's, and Johnson/Chadwick's Fundraising Entities offered and sold securities to investors.

2. Section 5 Violation of the Securities Act

Next, the SEC alleges that Maerki, Alcorn, and Janus Spectrum violated the Securities Act because Section 5(a)(1) prohibits the direct or indirect sale of securities unless a registration statement is in effect, and Section 5(c) prohibits the offer or sale of securities unless a registration statement is in effect. (Doc. 191 at 11-15.)

Under Section 5 of the Securities Act, the SEC must show that (1) no registration statement was in effect as to the securities; (2) the defendant directly or indirectly sold or offered to sell securities; and (3) the sale or offer was made through interstate commerce. See SEC v. CMKM Diamonds, Inc., 729 F.3d 1248, 1255 (9th Cir. 2013). Once the SEC introduces evidence that the registration provisions have been violated, the burden shifts to the defendant to show that an exemption applies. See 15 U.S.C. § 77c(b); SEC v. Murphy, 626 F.2d 633, 641 (9th Cir. 1980). Section 5 is a strict liability offense and requires no showing of scienter, or even negligence. CMKM Diamonds, 729 F.3d at 1256.

Here, the Fundraising Entities sold securities to investors nationwide which had been pooled to invest in FCC spectrum licenses through Janus Spectrum. (Doc. 192 at 7-11.) Thus, the SEC introduced evidence establishing that the Fundraising Entities sold securities through interstate commerce. (Id.) Further, it is undisputed that the Fundraising Entities never registered with the SEC the offer and sale of these securities. (Doc. 128.)

Section 5 liability extends to those who are "both a necessary participant and a

substantial factor in the sales transaction[s]." SEC v. Phan, 500 F.3d 895, 906 (9th Cir. 2007). The test is "whether, but for the defendant's participation, the sales transaction would not have taken place." Murphy, 626 F.2d at 651-52. The defendant's acts must have been more than *de minimis*. Id. Thus, section 5(a) and (c) impose liability on persons who "directly or indirectly" offer or sell an unregistered security. Section 5 is not limited to the person or entity who ultimately passes title to the security. Murphy, 626 F.2d at 649.

Here, Janus Spectrum, Alcorn and Maerki are liable for the offer and sale of the securities offered by the Fundraising Entities and their principals. Although Janus Spectrum, Alcorn and Maerki did not directly offer or sell the Fundraising Entities' securities, they did so indirectly as they were both "a necessary participant and substantial factor" in all of the Fundraising Entities' offerings and sale of securities. Although the Fundraising Entities were the actual issuers of their securities, Janus Spectrum, Alcorn and Maerki orchestrated and oversaw all of their offerings. Janus Spectrum, through Alcorn and Maerki, played a critical role in promoting the sale of the membership interests by, among other things: providing promotional videos for use in soliciting investors using "Money From Thin Air;" and "Educational Preview About Airwaves Presentation." Alcorn and Maerki assisted with drafting marketing materials; provided sample offering documents; training salespeople; participating in investor presentations or meetings for each fundraising entity; answering potential investors questions; making investor referrals to the fundraising entities; creating financial projections to be used in soliciting investors; and, by agreeing to manage and monetize the spectrum licenses. (Doc. 192 at 11-14.) Without the services of Janus Spectrum, through Maerki and Alcorn, the Fundraising Entities would not have been able to offer and sell securities to its investors. (Id.)

Therefore, based on the evidence submitted, Janus Spectrum, Alcorn and Maerki were both necessary participants and substantial factors in the Fundraising Entities' offerings and sales transactions of securities in violation of Sections 5(a) and (c) of the Securities Act. The SEC is entitled to summary judgment against Janus Spectrum, Alcorn and Maerki on the SEC's Third Claim for Relief. (Doc. 105 at 29-30.)

B. SEC's Fraud Allegations Against Janus Spectrum, Alcorn, Maerki, and DAPC

Next, the SEC alleges it is entitled to summary judgment on its claim that Janus Spectrum, Alcorn and Maerki violated the anti-fraud provisions of Section 17(a) of the Securities Act, 15 U.S.C. § 77q ("Section 17"). (Docs. 191 at 14-19, 105 at 28.) The SEC also alleges that it is entitled to summary judgment on its claim that Janus Spectrum, Alcorn and Maerki violated Section 10(b) of the Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j, and 17 C.F.R. § 240.10b-5 ("Rule 10b-5") (collectively "Section 10(b)"). (Id.) In its Rule 10b-5 allegations, the SEC further alleges that DAPC, as a control person, also violated Rule 10b-5.[5] (Id.)

The Alcorn Defendants first contend that there is no liability for a fraudulent scheme because omissions are actionable only if there was a duty to disclose that information. (Doc. 210 at 14 (citing WPP Luxembourg Gamma Three Sari v. Spot Runner, Inc., 655 F.3d 1039, 1048 (9th Cir. 2011).) According to the Alcorn Defendants, parties to an impersonal market transaction have no such duty without a fiduciary or agency relationship, prior dealings, or circumstances of trust and confidence. (Id.) Next, the Alcorn Defendants contend that material misrepresentations are generally issues for the jury, not for summary judgment, and further that the SEC has not established that the Alcorn Defendants made material misrepresentations. (Id. at 15.) Finally, the Alcorn Defendants contend that scienter is a question of fact for the jury. (Id. at 16.)

Although Janus Spectrum, Alcorn, and Maerki did not directly offer or sell the Fundraising Entities' securities, they did so indirectly as they were all both "a necessary participant and substantial factor" in the Fundraising Entities' offerings and sales of securities. At issue is whether Janus Spectrum, Alcorn, and Maerki also violated the anti-fraud provisions of Section 17 and Section 10(b).

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[5]The Court will consider *infra* DAPC's liability as a control person pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a). The SEC alleges that DAPC is liable as a control person for violations of both Rule 10b-5 and Section 15(a)(1) of the Exchange Act.

1. Section 17(a) and Section 10(b)

Generally, Section 17(a) prohibits fraud in the offer or sale of securities, and Section 10(b) prohibits fraud in connection with the purchase or sale of any security. See SEC v. Dain Rauscher, Inc., 254 F.3d 852, 855-56 (9th Cir. 2001). Under Sections 17(a)(1) and (3), it is unlawful for any person to employ any device, scheme, or artifice to defraud, or to engage in any transaction, practice, or course of business which would operate as a fraud or deceit upon the purchaser. 15 U.S.C. § 77q(a)(1),(3). Similarly, Section 10(b) makes it unlawful, in connection with the purchase or sale of a security, "to employ any device, scheme, or artifice to defraud" or "to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(a),(c). Section 17(a)(2) makes it unlawful, in the offer or sale of a security by the use of interstate commerce, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. 15 U.S.C. § 77q(a)(2).

A showing of scienter is required to establish a violation of Section 17(a)(1) and Section 10(b); however, a violation of Sections 17(a)(2)-(3) requires either a showing of scienter or simple negligence. Aaron v. SEC, 446 U.S. 680, 696-97 (1980). Scienter is defined as a "mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). In the Ninth Circuit, scienter is established by a showing of either actual knowledge or recklessness. Gebhart v. SEC, 595 F.3d 1034, 1040 (9th Cir. 2010). Reckless conduct is conduct that consists of a highly unreasonable act, or omission, that is an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it. See Dain Rauscher, 254 F.3d at 856 (citation and quotation omitted). Negligence, by contrast, is the absence of "reasonable prudence." Id.

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2. Elements of Liability

To establish liability under both Section 17(a)(1) and Section 10(b), the SEC must show, in the offer or sale, or in connection with the purchase or sale of a security: (1) that Janus Spectrum, Alcorn, and Maerki engaged in a scheme to defraud; (2) with scienter; (3) by means of interstate commerce. See Aaron, 446 U.S. at 696-97; Dain Rauscher, 254 F.3d at 855-56. Alternatively, under Section 17(a)(3), the SEC must show that Janus Spectrum, Alcorn, and Maerki: (1) engaged in a course of business that would operate as a fraud or deceit upon a purchaser; (2) acted at least negligently; (3) by means of interstate commerce. Id.

To establish liability under Section 17(a)(2), the SEC must show, in connection with the offer or sale of a security, that Janus Spectrum, Alcorn, and Maerki: (1) by means of interstate commerce; (2) obtained money or property; (3) by means of a material false statement or omission; and (4) acted at least negligently. Id.

3. Sections 17(a)(1),(3) and Section 10(b)

a. Scheme to Defraud

The Court finds that Janus Spectrum, Alcorn, and Maerki engaged in a scheme to defraud and engaged in a fraudulent course of business. (Doc. 192 at 11-14.) The evidence shows that Janus Spectrum, through Alcorn and Maerki, promoted FCC spectrum licenses in the guard and expansion band as the "new black gold" and that the spectrum being promoted was high demand spectrum that is already in use with current income streams. (Id.)

Maerki, in his presentation entitled "Money from Thin Air," misled investors assuring them that either Sprint, Verizon, AT&T, or T-Mobile were going to lease back from investors this spectrum on the guard or expansion band, paying investors a monthly fee, when in reality the major wireless carriers such as Sprint could not and would not use that spectrum to operate technology for cellular voice and data services due to the expansion or guard band channel only being authorized by the FCC to use a maximum bandwidth of 20 kilohertz. (Docs. 137-5, 192 at 3-4.) The cellular voice and data technology used by the major wireless carriers requires a minimum bandwidth of 1.25 to 1.4 MHz. (Doc. 192 at 4.) Despite this

reality, Maerki claimed that "Sprint or somebody [like] them" does not want to lose their capacity and would "probably lease it back [from] you [the investor] and pay you $4,800 a month." (Doc. 137-5 at 34.) Maerki continued, "Sprint is going to need [the 800 MHz spectrum] . . . But if they don't take it, AT&T needs it, and so does Verizon. More importantly T-Mobile really needs it. So do the other ones." (Id. at 34-35.) Maerki also asserted the expected revenues that could be realized from owning spectrum licenses: "They have 360 channels in that area, dividing that into the million, they're making about $3,000 a channel. Your license in that area, should you select to be in that area, would be for four channels times $3,000 or $12,000 a month. Wow." (Id. at 34.) Maerki continued: "In summary, let's put it this way. There is a limited number of available licenses. Of course, it's on a first come/first serve basis, very unique income stream opportunity, own somebody else's income stream that they have to give up. Very low risk, As a result, very high income. Small investment, high value, certainly work free . . . How long before I make money? We have discussed that, a year or two years unless it's a border, two to five years. Why isn't everyone doing this? Simply, they haven't learned about it yet . . . Urgency? Yes. First come/first serve. These will be gone in three to five months." (Id. at 35-37.) In fact, Alcorn even spoke with a person in the legal department at Sprint and was told that Sprint would not have an interest in Janus Spectrum's licenses and that Sprint was forbidden from buying them. (Doc. 192 at 21.)

This was reckless conduct. The prospective spectrum licenses at issue were not already in use generating current income streams. Janus Spectrum, through Alcorn and Maerki, made statements in presentations and emails that materially misled investors. (Doc. 192 at 11-14.) The undisputed evidence show that they knew that the spectrum being sold had little or no value. (Id.) It is reckless conduct for an actor to mislead buyers when it is either known to the defendant or is so obvious that the actor must have been aware of it. See Dain Rauscher, 254 F.3d at 856. Janus Spectrum, through Alcorn and Maerki, knew that these representations about the value and uses of the spectrum being promoted, the expansion and guard bands, the alleged need for application urgency, and the ease to which those

licenses could be monetized, were all false. (Doc. 192 at 11-14.) Maerki also falsely claimed that "demand for 600,700, 800, and 900 MHz spectrum is the most efficient out there. That is what we are talking about today, those are the Rolls Royce of spectrum." (Doc. 137-5 at 25.) Rather, the undisputed evidence establishes that the 800 MHz spectrum licenses that Janus Spectrum, through Alcorn and Maerki, was promoting and selling through the Fundraising Entities had little or no value. (See Docs. 89-11, 89-12, 89-25 and 89-44.) The evidence shows that, unlike the broadband spectrum used by major cellular companies which can carry data, video and voice transmissions, the narrow spectrum being promoted and applied for could only be used for discrete purposes, such as push-to-talk, walkie-talkie-type radios used by dispatchers, and machine-to-machine communications. (Doc. 96 at 8-9.)

Janus Spectrum charged it clients $40,000 per spectrum license application. Alcorn and Maerki led their clients to believe that the $40,000 application fee was covering the actual cost for applying for FCC spectrum licenses in the 800 MHz expansion band and guard band. (Doc. 192 at 17.) In fact, Janus Spectrum paid Tusa Engineering approximately $4,000 per application. (Id.) In addition to the license application fees Janus Spectrum paid to Tusa Engineering, Janus Spectrum paid $410 per license application for FCC filing fees, and $300 per channel to RadioSoft for frequency coordination services. (Id.) In order to avoid disclosing to Janus Spectrum's clients/investors how much it was paying Tusa Engineering to prepare license applications, Alcorn asked Tusa Engineering for invoices that described the services provided and stated "paid in full" but did not specify a dollar amount. (Id.)

In addition to these fraudulent representations, Maerki failed to disclose his extensive disciplinary history in the securities industry. For instance, in 1984, Maerki was sued by the SEC for securities fraud and permanently enjoined from participating in the securities industry due to violations of the registration and antifraud provisions of the federal securities laws based on his offer and sale of investment contracts.(Doc. 192 at 18-19); see also SEC v. Prater, 289 F. Supp. 2d 39, 52-53 (D. Conn. 2003) (stating that "[t]he failure to disclose anywhere on the websites or in other materials any information about [Defendant's]

extensive criminal history, including convictions for fraud, would certainly constitute a material omission which a reasonable investor might view as important in deciding whether to trust their money with [Defendant] or his company.")

Further, Alcorn prepared "commission side letters" for Johnson and Chadwick to conceal their 33% commissions from their investors. (Doc. 192 at 9.) Alcorn also created a "pro forma" estimate of the value of licenses in the expansion and guard bands in the top 25 economic areas and forwarded it Janus Spectrum's clients, including Bank, Jones, Johnson and Chadwick, for their use in soliciting investors. Alcorn estimated annual returns ranging up to 3373% depending on the economic area, and an average annual return from all 25 economic areas of 298%. (Id. at 13.)

Thus, based on all of the above evidence, Janus Spectrum, Alcorn, and Maerki, violated the anti-fraud provisions of Section 17 of the Securities Act and Section 10(b) of the Exchange Act.

b. Scienter

Next, the Court finds that Janus Spectrum, through Alcorn and Maerki, engaged in reckless conduct, therefore meeting the scienter requirement. (Doc. 192 at 18-19.) Reckless conduct is conduct that consists of a highly unreasonable act, or omission, that is an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it. See Dain Rauscher, 254 F.3d at 856. Recklessness may also be inferred from circumstantial evidence. SEC v. Burns, 816 F.2d 471, 474 (9th Cir.1987).

The Court has already discussed the factual basis for its finding of reckless conduct undertaken by Janus Spectrum, through Alcorn and Maerki. (See *supra* at 21-24.) In addition, the facts also show that Alcorn and Maerki did not conduct their required due diligence on the value or potential uses of the FCC spectrum licenses in the guard and expansion band, and were repeatedly warned in trade articles, in conversations with Sprint, and by their own advisors, that their underlying business model of leasing the FCC spectrum back to Sprint could not succeed. (Doc. 192 at 18-22.)

For instance, Alcorn and Maerki received and read copy of a March 5, 2012, newsletter published by Communications Daily, a reputable industry publication, which contained an article entitled "Phoenix Company Prepares License Application for Not-Yet Available Spectrum," discussing Smartcomm. (Doc. 145-8.) In the article it states that Smartcomm "is marketing license preparation services for spectrum the FCC is not even close to making available, and which may have little value when it does." (Id.) The article notes that Smartcomm charged $42,000 per application for 800 MHz licenses, up to 280 times what others are charging for similar services. (Id.) The article also discusses Pendelton Waugh, the founder of Smartcomm, and his prior criminal convictions for securities fraud, conspiracy to structure financial transactions to evade securities and banking reporting requirements, and prior securities fraud lawsuit brought by the SEC. (Id.) The article also notes that the spectrum at issue was located in the expansion and guard bands, and will not work for broadband because each channel is only 25kHz, and would only be attractive to private businesses like pizza restaurants who might use the push to talk media to communicate with its delivery drivers. (Id.) The article also quotes Alan Tilles, a Washington, D.C. area lawyer specializing in FCC work, who stated "There will be at some point a way to apply for these frequencies. The better question is why would you apply for them." (Docs. 145-8, 152-9 at 25-27.) In fact, in March 2012, Tilles told Alcorn that "There's NO spectrum below 861 MHz (and above 851 MHz) that can be used for any kind of broadband." (Doc. 151.)

Furthermore, as all of this relates to Janus Spectrum, since a corporation acts through its officers, the culpability of an entity's principals is imputed to the corporation. See, e.g., SEC v. Platforms Wireless Int'l Corp., 559 F. Supp. 2d 1091, 1096 (S.D. Cal. 2008) (citation omitted).

c. Interstate Commerce

Although Janus Spectrum, Alcorn, and Maerki did not directly offer or sell the Fundraising Entities' securities, they did so indirectly as they were both "a necessary participant and substantial factor" in all of the Fundraising Entities' offerings and sale of

securities. Without question, the Fundraising Entities sold securities to investors nationwide, thus establishing interstate commerce. (Doc. 192 at 7-11.) For instance, Jones, by selling membership interests in PSG, raised a total of $407,050 from 13 nationwide investors, which was pooled to invest in spectrum licenses. (Id. at 10-11.)

d. Conclusion

The SEC has established all of the elements showing that Janus Spectrum, Alcorn, and Maerki violated Sections 17(a)(1),(3) and Section 10(b) by undisputable evidence. The SEC unequivocally demonstrated that Janus Spectrum, Alcorn, and Maerki, in connection with the offer or sale of a security, were engaged in a scheme to defraud investors with scienter, and did so through means of interstate commerce. Therefore, the SEC is entitled to summary judgment against Janus Spectrum, Alcorn, and Maerki on the SEC's First and Second Claim for Relief for violations of Sections 17(a)(1),(3) and Section 10(b). (Doc. 105 at 28-29.)

4. Section 17(a)(2)

In order to establish a violation of Section 17(a)(2), the SEC must show that Janus Spectrum, Alcorn, and Maerki, in connection with the offer or sale of a security, (1) by means of interstate commerce; (2) obtained money or property; (3) by means of a material false statement or omission; and (4) acted at least negligently. See Aaron, 446 U.S. at 696-97. The misstatements and omissions must concern material facts. Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988). A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See TSC Indus. v. Northway, 426 U.S. 438, 449 (1976). Liability arises not only from affirmative representations but also from failures to disclose material information. Dain Rauscher, 254 F.3d at 855-56. The antifraud provisions impose a duty to disclose material facts that are necessary to make disclosed statements not misleading, whether mandatory or volunteered. SEC v. Fehn, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996) (further citation and quotation omitted). Moreover, whether a statement or omission is material is determined as a matter of law where the statement or omission is so obviously important to an investor, that reasonable minds cannot differ on the question of materiality. See Murphy, 626 F.2d at 653

("surely the materiality of information relating to financial condition, solvency and profitability is not subject to serious challenge").

The Court has already found that although Janus Spectrum, Alcorn, and Maerki did not directly offer or sell the Fundraising Entities' securities, they were intimately involved and thus were both "a necessary participant and substantial factor" in all of the Fundraising Entities' offerings and sale of securities by means of interstate commerce. The Court has further found that Janus Spectrum, Alcorn, and Maerki were engaged in a scheme to defraud investors with scienter, and therefore, the Court need not repeat the evidence utilized to establish these elements. All that remains is the element of whether Janus Spectrum, Alcorn, and Maerki defrauded investors by means of material false statement(s) or omission(s).

a. Material False Statement or Omission

The Court finds that the following facts were material because there is a substantial likelihood that a reasonable investor would consider them important prior to making an investment decision. See TSC Indus., 426 U.S. at 449. First, Janus Spectrum, Alcorn and Maerki's statements regarding the value and potential uses of licenses in the expansion and guard bands were materially false and misleading and they knew that their statements were false and misleading. (Doc. 192 at 15.) All of the high investment returns that were represented to investors were based on leasing to major wireless carriers, such as Sprint, Verizon, AT&T, and T-Mobile. (Id.) Because investors would not be able to lease to major wireless carriers, and instead only had the option to lease to a small business, or create a new business from the ground up, greatly diminished the represented value of the licenses. (Id.) The misstatements made by Janus Spectrum, through Alcorn and Maerki, were material to a reasonable investor, as there would have been no reason for a reasonable investor to pay tens of thousands of dollars for a license application for an investment that had little value. See, e.g., SEC v. Research Automation Corp., 585 F.2d 31, 35 (2d Cir. 1978) (finding materiality of misleading statements and omissions established because a reasonable investor would want to know if his investment is being diverted to company officers); see also SEC v. First Pac. Bancorp, 142 F.3d 1186, 1189, n.3 (9th Cir.1998) (discussing diversion of

investor funds in the context of securities fraud and disgorgement).

Janus Spectrum, Alcorn and Maerki also misled investors by showing Maerki's "Money From Thin Air" video, in which Maerki said that the spectrum at issue for licensing was "High demand spectrum that's already in use with current income streams." (Doc. 137-5 at 20.) In fact, no channel that was available in the expansion or guard bands that Janus Spectrum, Alcorn and Maerki, through Maerki, was promoting had any existing income stream. (Doc. 192 at 15.)

Next, Janus Spectrum, Alcorn and Maerkis' representations that the investment was "low risk" and "work free" were equally false and misleading. (Id. at 16.) The FCC will not sell an expansion or guard band license until an operating system is in place. (Id.) Thus, FCC regulations require, prior to sale of an expansion or guard band license, that the licensee build and operate a bona fide transmission system. (Id.) Buildout requirements ensure that spectrum will be used efficiently. (Id.) If the licensee does not build a transmission system within one year, the FCC will cancel the license. (Id.)

Finally, it was false for Janus Spectrum, Alcorn and Maerki to represent to potential investors that it was important to apply for the FCC licenses as quickly as possible because the licenses were going to be issued by the FCC on a first-come, first-served basis. (Id. at 16-17.) These statements about application urgency were false and misleading to investors. There was no need to prepare applications, or to solicit payments for such applications before the FCC issued a Public Notice opening up a particular geographic area. (Id.) The majority of the license applications created for Janus Spectrum clients were for geographic areas that were not subject to the FCC's first or second Public Notice. (Id. at 17.) As a result, the majority of the license applications created for Janus Spectrum's clients were for geographic areas for which the expansion and guard band licenses were not available at that time. (Id.)

b. Conclusion

Therefore, based on the above false statements and omissions, the SEC has demonstrated that Janus Spectrum, through Alcorn and Maerki's actions violated Section 17(a)(2). The SEC has shown that Janus Spectrum, Alcorn and Maerki acted at least

negligently in marketing this investment scheme through the Fundraising Entities to prospective investors. In connection with the offer or sale of a security and through interstate commerce, Janus Spectrum, Alcorn and Maerki obtained money or property by means of these materially false statements and omissions. See Aaron, 446 U.S. at 696-97. The Court further finds that Janus Spectrum, Alcorn and Maerki's false statements, misrepresentations, and omissions were material to investors since they concerned the fundamental, underlying value of the FCC spectrum licenses. See, e.g., Murphy, 626 F.2d at 653 (stating that the materiality of information is not subject to serious challenge when it relates to financial condition, solvency and profitability).

Therefore, the SEC is entitled to summary judgment against Janus Spectrum, Alcorn and Maerki on the SEC's First Claim for Relief for violation of Section 17(a)(2). (Doc. 105 at 28.)

C. SEC's Section 15 Allegations Against Janus Spectrum, Alcorn and Maerki

The SEC alleges that Janus Spectrum, Alcorn, Maerki, and DAPC as a control person, violated Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1) ("Section 15").[6] (Doc. 191 at 19-21.) The SEC argues that Janus Spectrum, Alcorn and Maerki violated Section 15(a)(1) because Section 15(a)(1) makes it unlawful for a broker or dealer "to make use of the mails or any means 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 SEC in accordance with Section 15(b). (Id.) The SEC need not prove the broker's scienter to establish a violation of Section 15(a). See SEC v. National Exec. Planners, Ltd., 503 F. Supp. 1066, 1073 (M.D. N.C. 1980).

The Alcorn Defendants contend that nothing links these Defendants to solicitations to these investors. (Doc. 210 at 17.)

Section 3(a)(4)(A) of the Exchange Act defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. §

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[6]As mentioned earlier, the Court will consider *infra* DAPC's liability as a control person pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

78c(a)(4)(A). Activities that indicate a person may be a "broker" are: (1) regular participation in securities transactions, (2) employment with the issuer of the securities, (3) payment by commission as opposed to salary, (4) history of selling the securities of other issuers, (5) involvement in advice to investors, and (6) active recruitment of investors. See SEC v. George, 426 F.3d 786, 797 (6th Cir. 2005).

The undisputed evidence demonstrates that Janus Spectrum, Alcorn and Maerki acted as a broker because they actively solicited investors to purchase interests in spectrum licenses through the various Fundraising Entities of Bank, Jones, and Johnson/Chadwick. (Doc. 192 at 11-14.) The Court further finds that Janus Spectrum, Alcorn and Maerki regularly participated in the securities transactions at key points during the formation and closing of investor transactions, as they described the merits of investing in spectrum licenses to potential investors, answered investor questions, and solicited potential investors by email, in one-on-one meetings, and/or held live presentations for potential investors. (Id.) Finally, it is undisputed that neither Janus Spectrum, Alcorn nor Maerki were registered as a broker-dealer with the SEC.

Based on this factual record, the Court concludes that Janus Spectrum, Alcorn and Maerki violated Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1). Therefore, the SEC is entitled to summary judgment against Janus Spectrum, Alcorn and Maerki on the SEC's Fourth Claim for Relief for violation of Section 15(a)(1). (Doc. 105 at 30.)

D. SEC's Allegations Against DAPC as Control Person

The SEC alleges that DAPC is liable, as a control person, for Janus Spectrum's violations of Section 10(b) and 15(a)(1) of the Exchange Act. (Doc. 191 at 21-22.)

Under Section 20(a) of the Exchange Act, a person may be held liable for another person's violation of the Exchange Act as a "control person." 15 U.S.C. § 78t(a). Section 20(a) applies to "every person," and Section 3(a)(9) of the Exchange Act expressly defines "person" to include a company. 15 U.S.C. § 78c(a)(9). To establish control person liability under the Exchange Act, the SEC must demonstrate: (1) a violation of the Exchange Act, and (2) that the control person directly or indirectly controls the person liable for the violation.

SEC v. Todd, 642 F.3d 1207, 1223-24 (9th Cir. 2011); Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1575 (9th Cir. 1990) (*en banc*) (holding it unnecessary to show "culpable participation" by control person). Under Rule 12b-2 of the Exchange Act, control is defined as the "power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." 17 C.F.R. § 240.12b-2. The SEC need not prove that DAPC was a culpable participant in the violations or that there was the exercise of actual power. Merely possessing the power to control the activities underlying the violations is sufficient. Howard v. Everex Systems, Inc., 228 F.3d 1057, 1065 (9th Cir. 2011). However, even if a securities violation occurs, there is no liability if the controlling person acted in good faith and did not directly or indirectly induce the acts constituting the violation. See Id. at 1065 ("A defendant is entitled to a good faith defense if he can show no scienter and an effective lack of participation.")

Here, DAPC has actual power or control over Janus Spectrum. (Docs. 128 at 5, 192 at 5.) DAPC has always been a managing member of Janus Spectrum, and it has been the sole owner of Janus Spectrum since January 2014 (prior to which it was a 55% owner). (Doc. 192 at 5.) According to the operating agreement of Janus Spectrum, DAPC is vested with final decision-making authority on behalf of Janus Spectrum, including all power over its finances and its corporate structure. (Id.)

Regarding the proceeds of the fraud, the evidence shows that DAPC received the proceeds, which further demonstrates its control over Janus Spectrum's scheme. (Doc. 185 at 6-7); see Arthur Children's Trust v. Keim, 994 F.2d 1390, 1397-98 (9th Cir. 1993) (reversing summary judgment on Section 20(a) claim granted in favor of a director on management committee of issuer who claimed he did not direct the investments at issue, noting that Section 20(a) claim arose "not because he controlled those marketing the investment contracts but because he was one of the persons controlling the issuer of the investment contracts").

The Court finds that DAPC is liable, as a control person, for Janus Spectrum's violations of Section 10(b) and 15(a)(1) of the Exchange Act. Therefore, the SEC is entitled

to summary judgment on the SEC's Second and Fourth Claims for Relief against DAPC as a control person for its violations of Section 10(b) and 15(a)(1) of the Exchange Act. (Doc. 105 at 28-30.)

IV. RELIEF

A. Permanent Injunction

The SEC argues that here the evidence establishes a reasonable likelihood of a future violation of the securities laws, and therefore a permanent injunction should be granted in this matter. See Murphy, 626 F.2d at 655-56. Factors to be considered by the Court include the degree of scienter involved; the isolated or recurrent nature of the infractions; the defendant's recognition of the wrongful nature of his conduct; the likelihood that, based on the defendant's occupation, future violations might occur; and the sincerity of the defendant's assurances against future violations. Id.

The SEC argues that all of those factors weigh in favor of the Court issuing a permanent injunction. The Court agrees and a permanent injunction will be ordered.

B. Disgorgement/Prejudgment Interest

Next, the SEC requests that the Court order disgorgement of illgotten gains. See SEC v. First Pac. Bancorp, 142 F.3d 1186, 1191 (9th Cir. 1998). Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable. Id. Disgorgement usually includes prejudgment interest to ensure that the wrongdoer does not profit from the illegal activity. See SEC v. Manor Nursing Ctr. Inc., 458 F.2d 1082, 1105 (2d Cir. 1972). Disgorgement need be only a "reasonable approximation" of the defendant's ill-gotten gains. See SEC v. Platforms Wireless Int'l Corp., 617 F.3d 1072, 1096 (9th Cir. 2010). Once such evidence has been presented by the SEC, the burden shifts to the defendant to "demonstrate that the disgorgement figure was not a reasonable approximation." Id.

Here, the SEC has calculated a reasonable approximation of the amount of ill-gotten gains obtained by Janus Spectrum, DAPC, Alcorn and Maerki. (Doc. 185 at 9.) Based on these calculations, Janus Spectrum, DAPC, Alcorn and Maerki will be ordered to pay

$6,172,360 in disgorgement and to be jointly and severally liable with each other for this disgorgement amount. Joint and several liability is appropriate when codefendants "collaborate or have a close relationship in engaging in the violations of the securities laws." See Platforms Wireless, 617 F.3d at 1098; First Pacific Bancorp, 142 F.3d at 1191-92 (defendants ordered jointly and severally liable even where one co-defendant received no personal benefit because of the closeness of the co-defendants' relationship in orchestrating their fraud).

Janus Spectrum, DAPC, Alcorn and Maerki will also be ordered to pay prejudgment interest from May 1, 2012 to January 13, 2017, the date of filing of the SEC's motion for summary judgment. Prejudgment interest on $6,172,360 for this period is $959,436. (Doc. 193). Thus, the total amount of disgorgement and prejudgment interest owed by Janus Spectrum, DAPC, Alcorn and Maerki, on a joint and several liability basis, is $7,131,796. (Id.)

C. Civil Penalties

Civil penalties are meant to punish the individual wrongdoer and to deter him and others from future securities law violations. SEC v. Lyndon, 39 F. Supp. 3d 1113, 1123 (D. Haw. 2014). Because civil penalties are imposed to deter the wrongdoer from similar conduct in the future, in assessing civil penalties, courts frequently apply the factors set forth in Murphy, 626 F.2d at 655-56, which also determine the appropriateness of injunctive relief. See Lyndon, 39 F. Supp. 3d at 1123-24. Those factors are: the degree of scienter involved; the isolated or recurrent nature of the infraction; the defendant's recognition of the wrongful nature of his conduct; the likelihood, because of the defendant's professional occupation, that future violations might occur; and the sincerity of the defendants' assurances, if any, against future violations. Murphy, 626 F.2d at 655.

Here, Alcorn's, and Maerki's violations were egregious, recurrent, and involved a high degree of scienter. In addition, Maerki is a recidivist, and neither Alcorn nor Maerki has expressed remorse or given any assurance against future violations.

According to the SEC, the Securities Act and Exchange Act provides that penalties

be assessed in accordance with a three-tier system. The third, or highest, tier applies to violations that: (1) involve "fraud, deceit, manipulation, or reckless disregard for a regulatory requirement"; and (2) "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." 15 U.S.C. §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii). For each fraud violation, the maximum third-tier penalty is the greater of (1) $160,000 for each violation occurring after March 5, 2013, or (2) the "gross amount of pecuniary gain" to the defendant as a result of the violation. 15 U.S.C. §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii); 17 C.F.R. § 201.1004 & 201.1005 & Tables IV & V (2014).

In addition to disgorgement and prejudgment interest, the Court will assess civil penalties against Alcorn and Maerki in an amount to be determined at a future hearing.

V. CONCLUSION

Accordingly, based on the foregoing,

IT IS HEREBY ORDERED granting the Plaintiff SEC's Motion for Summary Judgment against Defendants Janus Spectrum, David Alcorn Professional Corporation, David Alcorn and Kent Maerki. (Doc. 191.)

IT IS FURTHER ORDERED denying Defendants Janus Spectrum LLC, David Alcorn, and David Alcorn Professional Corporation's motion to strike "Plaintiff SEC's Objection to Alcorn Defendant's Index and Supplementary Declaration of Sana Muttalib." (Doc. 221.)

IT IS FURTHER ORDERED establishing **Friday, October 27, 2017**, as the deadline for the SEC to file its motion for disgorgement, prejudgment interest, and civil penalties against Judgment Defendants Daryl Bank; Dominion Private Client Group, LLC; Janus Spectrum Group, LLC; Spectrum Management, LLC; Spectrum 100, LLC; Spectrum 100 Management, LLC; Prime Spectrum, LLC; and Prime Spectrum Management, LLC.

IT IS FURTHER ORDERED setting a hearing on civil penalties against Alcorn and Maerki for **Tuesday, December 5, 2017, at 2:00 p.m.** in Courtroom 401, 401 West

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Washington Street, Phoenix, AZ, before Senior Judge Stephen M. McNamee.

DATED this 29th day of September, 2017.

Stephen M. McNamee
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Securities and Exchange Commission, Plaintiff, v. Janus Spectrum LLC, et al., Defendants.	No. CV-15-609-PHX-SMM **FINAL JUDGMENT AS TO DEFENDANTS JANUS SPECTRUM, LLC, DAVID ALCORN, DAVID ALCORN PROFESSIONAL CORPORATION, AND KENT MAERKI.**

The Court has entered summary judgment in favor of Plaintiff Security and Exchange Commission and against Defendants Janus Spectrum, LLC, David Alcorn, David Alcorn Professional Corporation, and Kent Maerki. (Doc. 239.) Subsequently, the Court held a hearing on potential civil penalties regarding Defendants Alcorn and Maerki. The Court deferred ruling on civil penalties pending the receipt of any additional argument by January 19, 2018. Absent receipt of any additional argument, accordingly, the Court now enters this Final Judgment, as follows:

I.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Janus Spectrum, DAPC, Alcorn and Maerki are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale

of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

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

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Janus Spectrum, Alcorn and Maerki are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following

who receive actual notice of this Final Judgment by personal service or otherwise: (a) any officers, agents, servants, employees, and attorneys of Defendants Janus Spectrum, Alcorn and Maerki; and (b) other persons in active concert or participation with Defendants Janus Spectrum, Alcorn and Maerki, or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Janus Spectrum, Alcorn and Maerki are permanently restrained and enjoined from violating Section 5 of the Securities Act, 15 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

(a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) any

officers, agents, servants, employees, and attorneys of Defendants Janus Spectrum, Alcorn and Maerki; and (b) other persons in active concert or participation with Defendants Janus Spectrum, Alcorn and Maerki, or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Janus Spectrum, DAPC, Alcorn and Maerki are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), which makes it unlawful for any broker or dealer which is either a person other than a natural person or a natural person, to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) any officers, agents, servants, employees, and attorneys of Defendants Janus Spectrum, DAPC, Alcorn and Maerki; and (b) other persons in active concert or participation with Defendants Janus Spectrum, DAPC, Alcorn and Maerki, or with anyone described in (a).

V.

IT IS FURTHER ORDERED, ADJUGED, AND DECREED that Defendants Janus Spectrum, DAPC, Alcorn and Maerki are liable, jointly and severally with each other, for disgorgement of $6,172,360, representing the profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $959,436, for a total of $7,131,796. Defendants Janus Spectrum, DAPC, Alcorn and Maerki shall satisfy this obligation by paying $7,131,796 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

The Defendants may transmit payment electronically to the SEC, which will provide

detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. The Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; the defendant as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

The Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the SEC's counsel in this action. By making this payment, the defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to any of the defendants.

The SEC shall hold the funds (collectively, the "Fund") and may propose a plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the SEC staff determines that the Fund will not be distributed, the SEC shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The SEC may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. The Defendants shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, in addition to their obligations to pay disgorgement and prejudgment interest, Defendant Alcorn shall pay

a civil penalty in the amount of $3,394,798, and Defendant Maerki shall pay a civil penalty in the amount of $2,777,562. The Defendants civil penalties are Ordered pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

The Defendants may transmit payment electronically to the SEC, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. The Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; the Defendant as a Defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

The Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the SEC's counsel in this action. By making this payment, the Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to any of the defendants.

The SEC shall hold the funds and may propose a plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the SEC staff determines that the Fund will not be distributed, the SEC shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for

purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendants, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by any of the Defendants under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendants of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VIII.

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

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court, having entered Final Judgment against all Defendants, the Clerk of Court shall terminate this case.

DATED this 9th day of February, 2018.

Stephen M. McNamee
Senior United States District Judge

From: Tom Littler [mailto:telittler@gmail.com]
Sent: Wednesday, May 30, 2018 12:04 PM
To: Searles, Donald
Subject: RE: Alcorn settled AP Order

yes

Thomas E Littler, Esq
Attorney at Law

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Tempe, Arizona 85284
Direct Line [redacted]-9010
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From: Searles, Donald [mailto:SearlesD@sec.gov]
Sent: Wednesday, May 30, 2018 12:03 PM
To: Thomas Littler <telittler@gmail.com>
Subject: RE: Alcorn settled AP Order

Tom,

I did not see an answer from Alcorn yesterday. Is it his intent to default in the AP action?

Don

From: Thomas Littler [mailto:telittler@gmail.com]
Sent: Thursday, April 12, 2018 4:12 PM
To: Searles, Donald
Subject: Re: Alcorn settled AP Order

Anytime 2:30 on

Sent from my iPhone

Thomas Littler Esq.
[redacted]595 Cell
Telittler@gmail.com

On Apr 12, 2018, at 3:45 PM, Searles, Donald <SearlesD@sec.gov> wrote:

Tom, do we have a set time to talk on Friday?
don
From: Thomas LITTLER [mailto:telittler@gmail.com]
Sent: Wednesday, April 11, 2018 9:44 AM
To: Searles, Donald
Subject: Re: Alcorn settled AP Order
Don,
I apologize for the delay but we did not finish closings and submit the case to the jury until the end of the day on Monday and the jury is still out.
We are still troubled by the provisions I earlier referred to. If you would like to set up a time later this week to discuss I would be happy to do so once this jury comes back.

Thomas E Littler
Attorney and Counselor at Law
[redacted]
Telittler@gmail.com
On Mon, Apr 2, 2018 at 6:14 PM, Searles, Donald <SearlesD@sec.gov> wrote:

Tom, any progress to report on Mr. Alcorn?

Don

From: Tom Littler [mailto:telittler@gmail.com]
Sent: Wednesday, March 28, 2018 7:16 PM
To: Searles, Donald
Cc: VanHavermaat, David J.
Subject: RE: Alcorn settled AP Order

Don,

I passed the documents on to Mr. Alcorn and will review it with him on Friday or Saturday.

[redacted]

Tempe, Arizona [redacted]

Direct Line [redacted]010

Cell [redacted]595

Email: telittler@gmail.com

Website: www.thomaslittler.com

From: Searles, Donald [mailto:SearlesD@sec.gov]
Sent: Wednesday, March 28, 2018 6:22 PM
To: Tom Littler <telittler@gmail.com>
Cc: VanHavermaat, David J. <VanHavermaatD@sec.gov>
Subject: Alcorn settled AP Order

Tom,

In the prior draft of the AP Order I sent you, I omitted what is now numbered paragraph II. This states that Alcorn admits to the Commission's jurisdiction over him, and that a district judgment has been entered against him, but he is not admitting or denying any of the Commission's other findings. This should address your concern about the impact on Alcorn's appeal. Given these are standard templates used in every Commission AP matter, I cannot accept your other proposed edits. But even without them, Alcorn's appeal is protected.

Again, let me know if you have comments.

Don

Donald W. Searles

Senior Trial Counsel

Division of Enforcement

Securities and Exchange Commission

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