

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19335

In the Matter of

MITCHELL B. DOW

Respondent.

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

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Pursuant to the January 25, 2021 Order to Show Cause in this matter, Exch. Act Release No. 90983 (Jan. 25, 2021), the Division of Enforcement (“Division”) submits this motion for default judgment and sanctions against Respondent Mitchell B. Dow (“Dow” or “Respondent”).

I. INTRODUCTION

Dow was a sales agent for the unregistered securities of Kentucky-Tennessee 50 Wells/400 BBLPD Block, Limited Partnership (a/k/a Warren County 200 Well/1,600 BBLPD Block, Kentucky-Tennessee 200 Well/1600 BBLPD Block) (“K-T 50 Wells”). Dow also acted as an unregistered broker for the offering.

The instant proceeding was commenced on August 13, 2019 based upon the entry of a final judgment against Dow, permanently enjoining him from future violations of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”), and Section 15(a) of the Exchange Act, in the civil action entitled *Securities and Exchange Commission v. Carol J. Wayland, et al.*, Civil Action Number 8:17-cv-01156-AG (DFMx), in the United States District Court for the Central District of California. *See* Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“OIP”) Exch. Act. Rel. 86639 (Aug. 13, 2019).

Pursuant to SEC Rule of Practice 141(a)(2)(iii), the OIP was served on Respondent. Dow did not file an answer, and thus is in default. Accordingly, the Division moves, pursuant to Rules 155(a)(2) and 220(f) of the SEC’s Rules of Practice, for a finding that Dow is in default and for the imposition of remedial sanctions. The Division specifically requests that the Commission issue an order barring Dow 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.

II. FACTS

A. Respondent

Dow age 55, is a resident of Long Beach, CA. Declaration of Lynn M. Dean (“Dean Decl.”) Ex. 1, OIP at ¶ A.1. Dow held Series 15 and 63 licenses, and was last associated with a registered broker-dealer in 1995. *Id.*

B. Entry of the Injunction and Dow’s Criminal Conviction

On April 18, 2019, a final judgment was entered against Dow, permanently enjoining him from future violations of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”), and Section 15(a) of the Exchange Act, in the civil action entitled *Securities and Exchange Commission v. Carol J. Wayland, et al.*, Civil Action Number 8:17-cv-01156-AG (DFMx), in the United States District Court for the Central District of California. Dean Decl., Ex. 1 (OIP. at B.2).

The Commission’s complaint alleged that, from at least November 2014 until March 2016, in connection with the sale of limited partnership interests, Dow acted as an unregistered broker and sold unregistered securities of KT-50 Wells. *Id.* OIP. at B.3.

On May 6, 2019, Dow pleaded guilty to one count of wire fraud in violation of Title 18 United States Code, Section 1343 before the United States District Court for the Central District of California, in *United States v. Mitchell B. Dow*, Case No. 19-cr-00079-JVS. *Id.* OIP. at B.4.

The criminal information to which Dow pleaded guilty alleged, among other things, that Dow defrauded investors and obtained money and property by means of materially false and misleading statements in connection with the sale of limited partnership interests underlying the Commission’s complaint described in Paragraph B. 2 of the OIP. Dean Decl., Ex. 2.

C. Dow is in Default

These proceedings were commenced on August 13, 2019. Exch. Act Rel. No. 86639. The OIP was served on Respondent by sending copies of the OIP addressed to Respondent’s last-known address, by U.S. Postal Service certified mail, in accordance with Commission Rule

of Practice 141(a)(2). No confirmation of receipt for that delivery was received. Dean Decl., ¶ 2.

On January 17, 2020, the OIP was served on Respondent by UPS Overnight Delivery with signature required. Dean Decl., ¶ 3. An adult over the age of 21 signed for the delivery. *Id.* On February 4, 2020, Counsel for the Division received an email from Respondent's counsel informing her that Respondent would not be making an appearance and defending himself in this action. *Id.* ¶ 4. Mr. Dow's counsel authorized Division counsel to inform the Commission of these facts, which she did on February 26, 2020. *Id.*

On January 25, 2021, the Commission issued an Order to Show Cause ordering Dow, by February 1, 2021, to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer and to otherwise defend this proceeding. Order, Exch Act. Rel. No. 90983 (Jan. 25, 2021). The Order further directed that if Dow failed to file a response, the Division should file a motion for default and other relief by March 8, 2021. *Id.* Dow did not appear or respond to the OSC. Dean Decl. ¶ 4.

III. ARGUMENT

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

Because Dow has not responded to the OIP, he is in default. Rule 155(a) of the SEC'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

17 CFR § 201.155(a). 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” Dean Decl. Ex. 1 (OIP at p. 3).

The Commission has already made findings that Dow was properly served with the OIP, and has failed to answer. *See* Order to Show Cause, Exch. Act. Rel. No. 90983 (Jan. 25, 2021). Under Rule 155(a), the allegations of the OIP may thus be deemed to be true and the Commission may determine the proceedings against the party upon consideration of the record, including the OIP. 17 CFR § 201.155(a).

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 – . . .

(iii) 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 is enjoined from any action, conduct or practice specified in Section 15(b)(4)(C); and (3) a bar is in the public interest.

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

Each of these factors is easily met here. First, the district court found that, at the time of the misconduct here, Respondent was acting as an unregistered broker. The Court based its finding on undisputed evidence establishing that:

Dow was not registered as or associated with any broker-dealers at the time of the KT 50 or CAR offerings. Yet [he] acted as broker dealer, soliciting investors, supervising salespeople, drafting offering documents, and handling investors. Dow [was] paid commissions for selling securities. And [he] solicited investors by phone and managed their questions and expectations. Doing so without proper registration[] was a violation of Section 15 of the Exchange Act.

Dean Decl. Ex. 3 (summary judgment order, p. 8 (internal citations omitted)). Based on that evidence, the Court concluded that Dow had acted as an unregistered broker under the Act and enjoined him from future violations of Section 15(a) of the Exchange Act. *Id.* 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 bars 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 Enjoined Dow Against Violations of the Securities Laws

The second element under Section 15(b)(6) is also established by the record in the underlying action because Respondent was 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 permanently enjoined Respondent from violating Section 15(a) of the Exchange Act and Sections 5(a) and (c) of the Securities Act. *See* Dean Decl., Ex. 5 (Final Judgment).

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. Dean Decl. Ex. 4.

As to whether a permanent bar is appropriate in a follow-on proceeding, “[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

The first three *Steadman* factors are met here. As previously noted, in the underlying district court action, the Court found that Dow, violated the law and that his conduct was “fraudulent, deceitful, and manipulative and resulted in loss to other persons.” Dean Decl. Ex. 3, at p. 14. Further, Respondent’s fraud was not an isolated incident. Instead, he participated in a scheme to defraud over a number of years that raised over \$2.4 million from over 40 investors. Dean Decl. Ex. 3 at p. 2. 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

The remaining *Steadman* factors also favor a permanent bar. To begin, Respondent has failed to appear and provide any assurance against future violations and he lacks any apparent recognition of his wrongful conduct. 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.

In addition, the final *Steadman* factor considers “the likelihood that the respondent’s occupation will present future opportunities for violations.” Here, we lack evidence of Dow’s current employment, but he has two felony convictions and used an alias in dealing with investors in KT 50, possibly because he feared discovery of his prior felony conviction. Dean Decl. Exs. 6, 7. 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.

March 8, 2021

Respectfully submitted,



Lynn M. Dean (323) 965-3245
Securities and Exchange Commission
Los Angeles Regional Office
Securities and Exchange Commission
444 South Flower Street, Suite 900
Los Angeles, CA 90071

CERTIFICATE OF SERVICE

I certify that on March 8, 2021, I caused the foregoing document to be served on the following persons, by electronic mail, facsimile, or by UPS overnight mail as stated:

Securities and Exchange Commission
APFilings@sec.gov

(By Electronic mail)


By UPS

Mr. Mitchell Dow

[REDACTED]
Long Beach, CA [REDACTED]

By UPS

Dan E. Chambers, Esq.
Chambers Law Firm, P.C.
404 West 4th Street, Suite L
Santa Ana, CA 92701



Lynn M. Dean

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19335

In the Matter of

MITCHELL B. DOW

Respondent.

**DECLARATION OF LYNN M. DEAN IN SUPPORT OF DIVISION
OF ENFORCEMENT'S MOTION FOR ENTRY OF
DEFAULT JUDGMENT AND SANCTIONS**

I, Lynn M. Dean, 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 before the United States District Court for the Central District of California. I am employed as an attorney in the Los Angeles Regional Office of the U.S. Securities and Exchange Commission (“SEC”), and am counsel for the Division of Enforcement in this case. I have personal knowledge or knowledge based upon my review of the file of the facts set forth in this Declaration and, if called and sworn as a witness, could and would competently testify thereto.

2. These proceedings were commenced on August 13, 2019. The Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“OIP”) was served on Mitchell Dow (“Dow”) by sending copies of the OIP to Dow’s last-known address, by U.S. Postal Service certified mail, in accordance with SEC Rule of Practice 141(a)(2). Dow did not appear or respond to the OIP and the SEC was unable to obtain delivery confirmation. A true and correct copy of the OIP is attached hereto as Exhibit 1.

3. On January 17, 2020, the OIP was served on Respondent by UPS Overnight Delivery with signature required. An adult over the age of 21 signed for the delivery. I provided proof of that service to the Commission by declaration dated January 31, 2020.

4. On February 4, 2020, I exchanged emails with Dan E. Chambers, counsel for Dow, in which Mr. Chambers informed me that Dow would not appear and defend this action and authorized me to share that information with the Commission. I provided that email to the Commission by declaration on February 26, 2020.

5. On January 25, 2021, the Commission issued an Order to Show Cause ordering Dow, by February 8, 2021, to show cause why it should not be deemed to be in default and this proceeding be determined against him due to his failure to file an answer and to otherwise defend. Order, Exch Act. Rel No. 90983 (Jan. 25, 2021). The Order further directed that if Dow failed to file a response, the

Division should file a motion for default and other relief by March 8, 2021. *Id.* Dow did not appear or respond to the OSC.

6. A true and correct copy of the criminal information and plea in United States v. Mitchell B. Dow, Case No. 19-cr-00079-JVS is attached hereto as Exhibit 2.

7. A true and correct copy of the Minute Order granting summary judgment in in the civil action entitled *Securities and Exchange Commission v. Carol J. Wayland, et al.*, Civil Action Number 8:17-cv-01156-AG (DFMx) is attached hereto as Exhibit 3.

8. A true and correct copy of the Minute Order granting the SEC's motion for injunctions and civil penalties in the civil action entitled *Securities and Exchange Commission v. Carol J. Wayland, et al.*, Civil Action Number 8:17-cv-01156-AG (DFMx) is attached hereto as Exhibit 4.

9. A true and correct copy of the Final Judgment against Mitchell B. Dow in the civil action entitled *Securities and Exchange Commission v. Carol J. Wayland, et al.*, Civil Action Number 8:17-cv-01156-AG (DFMx) is attached hereto as Exhibit 5.

10. A true and correct copy of the criminal docket for Mitchell Brian Dow in *U.S. v. Mortinson, et al*, Case No. 8:98-cr-00155-AHS-2 is attached hereto as Exhibit 6.

11. A true an correct copy of June 22, 2015 email from "Jodi" Wayland to "Dave Baker" in which she addresses him as "Mitch" is attached hereto as Exhibit 7.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 8th day of March, 2021 in Los Angeles, California.



Lynn M. Dean

CERTIFICATE OF SERVICE

I certify that on March 8, 2021, I caused the foregoing document to be served on the following persons, by electronic mail, facsimile, or by UPS overnight mail as stated:

Securities and Exchange Commission
APFilings@sec.gov

(By Electronic mail)

By UPS

Mr. Mitchell Dow

[REDACTED]
Long Beach, CA [REDACTED]

By UPS

Dan E. Chambers, Esq.
Chambers Law Firm, P.C.
404 West 4th Street, Suite L
Santa Ana, CA 92701



Lynn M. Dean

EXHIBIT 1

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86639 / August 13, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19335

In the Matter of

MITCHELL B. DOW,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Mitchell B. Dow (“Respondent” or “Dow”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Dow, age 55, is a resident of Long Beach, CA. From approximately November 2014 to at least March 2016, Dow acted as a boilerroom sales person for the unregistered securities of Kentucky-Tennessee 50 Wells/400 BBLPD Block, Limited Partnership (a/k/a Warren County 200 Well/1,600 BBLPD Block, Kentucky-Tennessee 200 Well/1600 BBLPD Block) (“K-T 50 Wells”). Dow also acted as an unregistered broker for the offering. Dow held Series 15 and 63 licenses, but was last associated with a registered broker-dealer in 1995.

B. ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTION

2. On April 18, 2019, a final judgment was entered against Dow, permanently enjoining him from future violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), and Section 15(a) of the Exchange Act, in the civil action entitled Securities and Exchange Commission v. Carol J. Wayland, et al., Civil Action Number 8:17-cv-01156-AG (DFMx), in the United States District Court for the Central District of California.

3. The Commission's complaint alleged that, from at least November 2014 until March 2016, in connection with the sale of limited partnership interests, Dow acted as an unregistered broker and sold unregistered securities of KT-50 Wells.

4. On May 6, 2019, Dow pleaded guilty to one count of wire fraud in violation of Title 18 United States Code, Section 1343 before the United States District Court for the Central District of California, in United States v. Michell B. Dow, Case No. 19-cr-00079-JVS.

5. The criminal information to which Dow pleaded guilty alleged, among other things, that Dow defrauded investors and obtained money and property by means of materially false and misleading statements in connection with the sale of limited partnership interests underlying the Commission's complaint described in Paragraph 3 above.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. Whether, pursuant to Section 15(b) of the Exchange Act, it is appropriate and in the public interest to suspend or bar Respondent from participating in any offering of penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed Answer, or fails to appear at a hearing or conference after being duly notified, 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 as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent by any means permitted by the Commission's Rules of Practice.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the

Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

EXHIBIT 2

FILED

2019 MAY -6 PM 3:46

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

BY _____

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MITCHELL DOW,
aka "David Baker,"

Defendant.

No. SACR 19-00079 AG
I N F O R M A T I O N
[18 U.S.C. § 1343: Wire Fraud]

The United States Attorney charges:

[18 U.S.C. § 1343]

A. INTRODUCTORY ALLEGATIONS

1. At all times relevant this Information, defendant MITCHELL DOW, also known as "David Baker" ("DOW"), worked at a call room in Irvine, California that sold units of the Kentucky-Tennessee 50 Wells/400 BBLPD Block ("K-T Wells"), purportedly headquartered in Cheyenne, Wyoming, with its actual place of business in Newport Beach, California, to investors nationwide. In the Private Placement Memoranda, the stated goal of the K-T

1 Wells offering was to raise up to \$10 million from investors for
2 the development and operation of oil wells.

3 B. THE SCHEME TO DEFRAUD

4 2. Beginning in or around March 2015, and continuing to
5 in or around November 2015, in Orange County, within the Central
6 District of California, and elsewhere, defendant DOW and others,
7 knowingly and with the intent to defraud, devised and executed a
8 scheme to defraud and obtain money from investors by means of
9 materially false and fraudulent pretenses, representations, and
10 promises, and the concealment of material facts in connection
11 with an oil and gas private placement investment fraud scheme.

12 3. In carrying out the scheme, defendant DOW engaged in
13 the following fraudulent and deceptive acts, practices, and
14 devices, among others:

15 a. Using the name "David Baker," defendant DOW
16 solicited investors to purchase units of K-T Wells.

17 b. Defendant DOW told prospective investors that
18 their funds would be used to acquire leases, drill new wells,
19 rework old wells, and pay geologists.

20 c. Although defendant DOW had a duty to disclose,
21 defendant DOW did not disclose to investors that defendant DOW
22 was being paid commissions from investor funds.

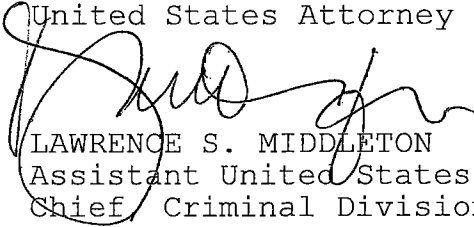
23 d. Although defendant DOW had a duty to disclose,
24 defendant DOW did not disclose to investors that he had a prior
25 wire fraud conviction in United States v. Dow, SA CR 98-155-AHS,
26 for which he was sentenced to 24 months' imprisonment.

27 e. From this scheme, defendant DOW caused
28 approximately \$94,800 in loss.

1 C. THE USE OF AN INTERSTATE WIRE

2 4. On or about May 14, 2015, within the Central District
3 of California, and elsewhere, for the purpose of executing the
4 above-described scheme to defraud, defendant DOW caused the
5 transmission, by means of wire communication in interstate
6 commerce, of \$25,000 from investor M.K.'s Deseret First Credit
7 Union account in Park City, Utah to K.T. Wells' Bank of America
8 account in Huntington Beach, California.

9 NICOLA T. HANNA
10 United States Attorney

11 
12 LAWRENCE S. MIDDLETON
13 Assistant United States Attorney
Chief, Criminal Division

14 DENNISE D. WILLETT
15 Assistant United States Attorney
Chief, Santa Ana Branch Office

16 JENNIFER L. WAIER
17 Assistant United States Attorney
Deputy Chief, Santa Ana Branch Office

EXHIBIT 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**JS-6****CIVIL MINUTES – GENERAL**

Case No.	SACV 17-01156 AG (DFMx)	Date	April 8, 2019
Title	SECURITIES AND EXCHANGE COMMISSION v. CAROL J. WAYLAND ET AL.		

Present: The Honorable	ANDREW J. GUILFORD		
Melissa Kunig	Not Present		
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		

**Proceedings: [IN CHAMBERS] ORDER REGARDING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

The Securities and Exchange Commission (“SEC”) filed a lawsuit against Kentucky-Tennessee 50 Wells/400 BBLPD Block, Limited Partnership (“KT 50 Wells”), HP Operations, LLC (“HP”), CAR Leasing, LLC (“CAR”), and five individual defendants, Carol J. Wayland, John C. Mueller, Mitchell B. Dow, Barry Liss, and Steve G. Blasko. The SEC has since dismissed claims against John C. Mueller, who has passed away. (Dkt. 67.) The SEC’s complaint includes five claims: (1) violation of § 10(b) of the Securities Exchange Act of 1934 (referred to as the “Exchange Act” for short) and SEC Rule 10b–5; (2) violation of § 17(a)(2) of the Securities Act of 1933; (3) violation of § 17(a)(1) and § 17(a)(3) of the Securities Act; (4) violation of § 5(a) and § 5(c) of the Securities Act; and (5) violation of § 15(a) of the Exchange Act. (*See* Dkt. No. 1.) The SEC now moves for summary judgment against all Defendants.

The Court GRANTS IN PART the SEC’s motion. (Dkt. 61-1.)

1. BACKGROUND

The parties. Wayland and Mueller operated KT 50 Wells and wholly owned HP and CAR. HP was the managing general partner of KT 50 Wells and had “sole discretion over the business.” (Compl., Dkt. 1 at ¶ 13.) CAR performed the administrative tasks, including administration of investments before the offering. (*Id.*) Wayland and Mueller drafted and revised KT 50 Wells’s offering document, the Private Placement Memorandum, or “PPM,” which included statements about their experience managing oil and gas investment projects and about the commitment KT 50 Wells was making regarding its use of investor money. Dow, Liss, and

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Blasko were salespersons for KT 50 Wells. Specifically, they were “closers.” They were the ones ultimately in charge of convincing investors to invest in KT 50 Wells, and they made the largest commissions.

Defendants’ Business Plan. The SEC describes Defendants’ alleged scheme as follows. Wayland founded KT 50 and operated it through managing general partner HP. (Statement of Uncontroverted Facts and Conclusions of Law (“SUF”), Dkt. 61-2 at No. 16.) KT 50 purported to be an investment in the development and operation of oil wells, and the KT 50 PPM dated July 21, 2014 stated that 65% of investor funds would be used for “drilling efforts.” (*Id.* Nos. 24, 50.) The PPM also stated that 35% of the funds raised would go to business expenses. (*Id.* No. 51.)

Wayland and Mueller set up a boiler room in Irvine, California under the fictitious name “Sahara Wealth Advisors” to attract investors. (*Id.* No. 26.) KT 50 salespeople, who were divided into “fronters” and “closers” solicited investments by phone and email and earned commissions on their sales. (*Id.* Nos. 32-43.) From about May 2014 to February 2016, Defendants sold KT 50 securities to at least 41 investors in an unregistered securities offering of limited partnership units. (*Id.* No. 17.) Defendants raised at least \$2,417,257. (*Id.*) Neither KT 50 nor CAR were ever registered with the SEC, nor did they sell to accredited investors. (SUF Nos. 8, 18, 20-22, 67.)

Despite the representations made in the PPM, Wayland used investor funds to pay business expenses beyond those described in the offering documents and only spent 13% of the money raised on oil well development and operation. (SUF Nos. 52-53.) While the Executive Summary for the KT 50 offering projected annual returns of between 43.2% and 345% for each \$100,000 investment, most investors received much smaller and less frequent returns, with some receiving only \$17. (*Id.* Nos. 61-63.) Defendants also misrepresented their expertise with oil investment projects and misappropriated over one third of the money raised. (*Id.* Nos. 54, 64, 65.) Wayland and Mueller spent investments received on personal expenses, including groceries, dining, car payments, cash, and rare coins. (*Id.* No. 54.)

Procedural History. The Court denied Defendants’ motions to dismiss in October 2017, finding the SEC had properly stated claims for violation of the Securities Exchange Act of 1934

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(“Exchange Act”) and Securities Act of 1933 (“Securities Act”). (Order Denying Motions to Dismiss, Dkt. 27.) In October 2018, the Court granted Defendants’ counsel’s motion to withdraw, and since then, no attorneys have made an appearance on behalf of Defendants. The corporate Defendants (KT 50, HP, and CAR) may not proceed in federal court as unrepresented organizations. *See* L.R. 83.3. The individual Defendants participated in a mediation with SEC attorneys on March 13, 2019, but no agreement was reached. (Declaration of Lynn M. Dean, ¶ 2.)

The SEC’s summary judgment motion argues that Defendants’ own admissions and the undisputed evidence prove that all Defendants violated Section 5(a) and 5(c) of the Securities Act by offering and selling over \$2.4 million in unregistered securities. (Motion for Summary Judgment, Dkt. 61-1.) The SEC also argues that the undisputed evidence shows that Wayland, Dow, Liss, and Blasko violated Section 15 of the Exchange Act by offering and selling securities while they were neither registered broker-dealers nor associated with a registered broker-dealer. And it argues the undisputed evidence shows Wayland, KT 50, HP, and CAR violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 by engaging in a scheme to defraud and making material misrepresentations regarding the offer and sale of the KT 50 offering.

Defendants haven’t filed any opposition to the SEC’s pending motion for summary judgment. Still, the Court has thoroughly analyzed the sufficiency of the facts and legal conclusions offered by the SEC.

2. LEGAL STANDARD

A party is entitled to summary judgment if “there is no genuine issue as to any material fact and ... the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). To defeat a summary judgment motion, the non-moving party may not merely rely on its pleadings or conclusory statements, nor may the non-moving party merely attack or discredit the moving party’s evidence. *Campbell v. Medtronic MiniMed, Inc.*, No. 2:15-CV-08091-RGK-PJW, 2016 U.S. Dist. LEXIS 120929, *6 (C.D. Cal. Sept. 6, 2016). Rather, the non-moving party must affirmatively present specific admissible evidence sufficient to create a genuine issue of material fact. *Id.* Furthermore, “[o]nly disputes

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over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 248 (1986).

3. ANALYSIS

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

Sections 5(a) and (c) of the Securities Act prohibit the unregistered offer or sale of securities in interstate commerce, unless an exemption from registration applies. *See SEC v. Eurobond Exch.*, 13 F.3d 1334, 1338 (9th Cir. 1994). To show a Section 5 violation, the SEC must prove that (1) defendants, directly or indirectly, offered or sold securities, using interstate transportation or communication or the mails; and (2) no registration was in effect or filed with the SEC. *See* 15 U.S.C. §§ 77e(a), 77e(c); *SEC v. Phan*, 500 F.3d 895, 902 (9th Cir. 2007). Section 5 is a strict liability statute. *See SEC v. Holschub*, 694 F.2d 130, 137 n.10 (9th Cir. 1982) (“good faith is not relevant to whether there has been a primary violation of the registration requirements”); *see also SEC v. CMKM Diamonds, Inc.*, 729 F. 3d 1248, 1257 (9th Cir. 2013) (Section 5 “imposes strict liability for violations of its registration requirement.”)

3.1.1 Offering or Sale of Securities Using Interstate Commerce

The Securities Acts define “security” as, among other things, an “investment contract.” *See* 15 U.S.C. §§ 77b(a)(1), 78c(a)(10) (2003); *see also S.E.C. v. Ribera*, 350 F.3d 1084, 1090 (9th Cir. 2003). And the Ninth Circuit defines an investment contract as “(1) an investment of money (2) in a common enterprise (3) with an expectation of profits produced by the efforts of others.” *SEC v. Ribera*, 350 F.3d 1084, 1090 (9th Cir. 2003) (citing *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946)). Here, Defendants’ investment opportunity satisfies all the “essential ingredients” of an investment contract. *See Howey*, 328 U.S. at 301; *see also Ribera*, 350 F.3d at 1091.

To begin, the undisputed facts show that Defendants solicited investors to raise about \$2.4 million. (SUF No. 17.) So the “investment of money” prong of *Howey* has been satisfied. Next, the SEC has shown that the KT 50 offering was a “common enterprise,” which the

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Ninth Circuit defines as “one in which the fortunes of investors are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties.” *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 (9th Cir 1973). Horizontal or vertical commonality satisfies the common enterprise element, and here there was both. *R.G. Reynolds Enters., Inc.*, 952 F.2d at 130. The investors in KT 50 pooled their money – to develop and operate oil wells, they thought – and were promised a pro rata share of the profits. *See, e.g.*, SUF No. 24. This shows horizontal commonality. And the investors’ fortunes were linked to Mueller’s and Wayland’s efforts to manage and promote KT 50 and CAR’s operations, showing vertical commonality. *See SEC v. CKB168 Holdings, Ltd.*, No. 13-CV-5584 (RRM) (RLM), 2016 U.S. Dist. LEXIS 136928, *70 (E.D.N.Y. Sept. 28, 2016) (finding both horizontal and vertical commonality where returns depended on the efforts of others). So the commonality prong of *Howey* has been met. And for the same reason – investors’ reliance on Defendants’ efforts – the third prong of expecting profits based on the promoter’s efforts is also satisfied.

Regarding the requirement that the offer or sale of securities occurs through interstate commerce, “[a]ll that is required . . . is a showing that a means, instrumentality or facility described in the introductory language of the [federal securities laws] was used,” and that such use was connected to the alleged violations. *Matheson v. Armburst*, 284 F.2d 670, 673 (9th Cir. 1960). *See, e.g., United States v. Nader*, 542 F.3d 713, 717 (9th Cir. 2008) (“Telephones are instrumentalities of interstate commerce . . .”); *Utah Lighthouse Ministry v. Foundation for Apologetic Info. & Research*, 527 F.3d 1045, 1054 (10th Cir. 2008) (“We agree that the Internet is generally an instrumentality of interstate commerce.”); *SEC v. CKB168 Holdings, Inc.*, 2016 U.S. Dist. LEXIS 136928, * 45 (use of emails, wire transfers, and the Internet are all instrumentalities of interstate commerce). This requirement is easily met in this case, where KT 50 salespeople regularly communicated with prospective and actual investors by phone and email, organized bank transfers, and received checks in the mail. *See, e.g.* SUF Nos. 23, 33, 37, 41, 44.)

3.1.2 Integration

The SEC has also shown through uncontroverted evidence that the KT 50 and CAR offerings were integrated in violation of Section 5. The factors used to consider whether offerings can be integrated are: (1) whether the sales are part of a single plan of financing; (2) whether the

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sales involve issuance of the same class of securities; (3) whether the offerings were made at or about the same time; (4) whether the same type of consideration is being received; and (5) whether the sales are made for the same general purpose. *See* SEC Rel. No. 33-4552, 1962 WL 69540, at *3 (Nov. 6, 1962). Before considering these factors, the Court first looks at whether the offerings are subject to issuer integration, meaning that they are offered by the same issuer. *See Rathbone, King & Seeley, Inc.*, SEC No-Action Letter, 1987 WL 107900, at *3 (Apr. 20, 1987). Here, Wayland had common control over both KT 50 and CAR. (SUF No. 2.) Defendants disregarded entity form by rolling investors who had invested in CAR into the KT 50 offering and treating them as KT 50 investors. (*Id.* No. 17.) Wayland also used CAR to perform administrative and other tasks for KT 50. (*Id.* No. 7.) So the SEC has shown issuer integration.

Next, applying the five-factor integration test to Defendants’ offerings shows the offerings themselves were integrated. Both offerings were part of a single plan of financing and for the same general purported purpose, which was to develop and operate oil wells. (*Id.* No. 17, 84-86.) The offerings appear to have overlapped for part of 2014, and both offerings received cash as consideration. (*Id.* No. 23, 84-86.) The only factor that slightly tips in favor of non-integration is that the offerings involved different classes of securities (second factor), but all other factors point toward integration.

3.1.3 Wayland’s Liability

The fact that Wayland didn’t personally solicit each investor doesn’t limit her liability. Under Section 5, liability extends to “direct” or “indirect” offers of sales of securities. 15 U.S.C. § 77e(a). “[C]ourts have established the concept of ‘participant’ liability to bring within the confines of § 5 persons other than the sellers who are responsible for the distribution of the unregistered securities.” *SEC v. Murphy*, 626 F.2d 633, 649 (9th Cir. 1980). Wayland need only be a “substantial factor in the sales transaction[s]” to be liable under Section 5. *SEC v. CMKM Diamonds, Inc.*, 729 F.3d at 1255. Wayland’s integral oversight of the sales efforts, communications with investors, and handling of offering materials is undisputed, and thus liability for her conduct has been established. (SUF Nos. 45-49.)

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3.1.4 No Registrations and No Exemptions

It is undisputed that neither the KT 50 nor CAR offerings were registered with the SEC. (SUF Nos. 8, 18, 67.) The KT 50 PPM purported to rely on the Rule 506(c) exemption for accredited investors. (*Id.* Nos. 19-22.) But Defendants allowed unaccredited investors to invest, so that exemption is inapplicable. *See id.*; 17 C.F.R. 230.505(c) (only accredited investors may invest in a Rule 506(c) offering); Dean Decl. Ex. 6 at HP002263-HP002264, HP002267; Dean Decl. Ex. 60 at 36:11-16.) In any case, registration exemptions are narrowly construed to promote full disclosure of information to the investing public. *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d at 1086; *SEC v. Cavanagh*, 445 F.3d 105, 115 (2nd Cir. 2006). Defendants haven't submitted any opposition or made any effort to prove that an exemption to the registration violation applies, as is their burden after the SEC makes a *prima facie* showing. *See SEC v. Ralston Purina Co.*, 346 U.S. at 126 (1953). Thus, no exemption applies.

The SEC has shown that Defendants violated Section 5 of the Securities Act.

3.2 Section 15 of the Exchange Act

Section 15(a) of the Exchange Act requires brokers or dealers who “effect any transaction in, or induce or attempt to induce the purchase or sale of, any security” through the use of interstate commerce, to be registered with the SEC or, if the broker or dealer is a natural person, to be associated with a registered broker or dealer that is not a natural person. 15 U.S.C. § 78o(a). The term “broker” includes “any person engaged in the business of effecting transactions in securities for the account of others.” 15 U.S.C. § 78c(a)(4)(A). Scierer isn't required to prove a violation of Section 15(a). *S.E.C. v. Interlink Data Network of Los Angeles, Inc.*, Civ. A. No. 93-3073 R., 1993 WL 603274, at *10 (C.D. Cal. Nov. 15, 1993). In deciding whether someone is a broker, courts have considered whether the individual (1) is an employee of the issuer; (2) received commissions as opposed to a salary; (3) is selling, or previously sold, the securities of other issuers; (4) is involved in negotiations between the issuer and the investor; (5) makes valuations as to the merits of the investment or gives advice; and (6) is an active rather than passive finder of investors. *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003).

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The undisputed evidence shows that Wayland, Liss, Blasko, and Dow were not registered as or associated with any broker-dealers at the time of the KT 50 or CAR offerings. *See, e.g.*, SUF Nos. 69, 73, 77, 81. Yet they acted as broker dealers, creating a boiler room, soliciting investors, supervising salespeople, drafting offering documents, and handling investors. (*Id.* Nos. 25-30, 45-49, 68, 70, 74, 78.) Liss, Blasko, and Dow were paid commissions for selling securities. (*Id.* Nos. 72, 76, 80.) And they solicited investors by phone and managed their questions and expectations. (*Id.* Nos. 25-31, 45-49.) Doing so without proper registrations was a violation of Section 15 of the Exchange Act.

3.3 Section 17 of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act (Antifraud Provisions)

Section 17(a) of the Securities Act applies to sellers and makes it unlawful for anyone to commit fraudulent acts in connection with the offer or sale of securities. 15 U.S.C.A. § 77q; *Aaron v. Sec. & Exch. Comm'n*, 446 U.S. 680, 687 (1980). Exchange Act 10(b) and Rule 10b-5 apply to both sellers and buyers and make it unlawful to commit fraudulent acts in connection with the purchase or sale of a security. 15 U.S.C.A. § 78j; 17 CFR § 240.10b-5 (1979); *Aaron*, 446 U.S. at 687.

“Violations of Sections 17(a)(2) and (3) require a showing of negligence.” *S.E.C. v. Dain Rauscher, Inc.*, 254 F.3d 852, 856 (9th Cir. 2001). And “[v]iolations of Section 17(a)(1), Section 10(b) and Rule 10b-5 require *scienter*.” *Id.* *Scienter* is defined as a “a mental state embracing intent to deceive, manipulate, or defraud.” *Aaron*, 446 U.S. at 686 n.5 (1980). “*Scienter* is satisfied by recklessness.” *Dain Rauscher, Inc.*, 254 F.3d at 856.

3.3.1 Misrepresentations

To establish a violation of Section 17(a)(2), the SEC must prove, in connection with the offer or sale of a security: (1) a material false statement or omission; (2) made with at least negligence; (3) the receipt of money or property by means thereof; (4) by means of interstate commerce. *See, e.g., SEC v. Glt Dain Rauscher, Inc.*, 254 F.3d at 856. To establish a violation of Section 10(b) and Rule 10b-5(b), the SEC must show that a defendant, in connection with the purchase or sale of a security: (1) made an untrue statement or omitted to state a material fact,

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(2) with scienter; (3) by means of interstate commerce. See 17 C.F.R. § 240.10b-5(b). *SEC v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1092 (9th Cir. 2010); see also *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1364 (9th Cir. 1993). To be actionable, 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); *SEC v. Platforms Wireless*, 617 F.2d at 1092.

The evidence of misrepresentations in this case is uncontroverted. Wayland, KT 50, and HP represented to investors that 65% of their money would be used to fund the development and operation of oil wells. (SUF Nos. 50, 61-63.) But only 13% of the money raised was actually allocated to that purpose. (SUF No. 52.) The KT 50 PPM also stated that 65% of funds raised would be used for business expenses. (*Id.* No. 51.) But Wayland and Mueller used at least \$871,463 (36% of the offering) for personal expenses, including purchasing rare coins and groceries. (*Id.* No. 54.) Wayland, KT 50, and HP also misrepresented the rate of return on the KT 50 investment. The PPM’s Executive Summary projected annual returns between 43.2% and 345% for each \$100,000 unit of investment. (*Id.* No. 61.) These projections had no reasonable basis, considering that Defendants used the funds they received for personal expenses and didn’t spend the required minimum on oil production. (*Id.* No. 62.) Wayland, KT 50, and HP also misrepresented the experience of the involved “directors” of the offerings. In the KT 50 PPM, they stated that the company’s directors had a combined 80 years of experience with oil investment projects, plus 34 years in geological work, and that Wayland had “extensive experience in oil and gas administration.” (*Id.* No. 64.) But neither Wayland nor Mueller had any experience in oil and gas investment projects. (*Id.* 65.)

3.3.2 Materiality

These misrepresentations were material, as similar cases involving channeling investments for personal use have established. See *SEC v. Capital Cove Bancorp LLC*, Case No. SACV 15-980-JLS (JCx), 2015 WL 9704076, at *7 (C.D. Cal. Sept. 1, 2015) (“Committing to invest Fund proceeds in real estate while channeling those investments to either personal use or Ponzi-like payments is clearly a material misrepresentation.”); *SEC v. Interlink Data Network of Los Angeles, Inc.*, Civ. A. No. 93-3073 R, 1993 WL 603274, at *47 (C.D. Cal. Nov. 15, 1993) (failure to

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disclose monies raised were used to pay for offeror’s personal expenses was a material misrepresentation). The misrepresentations involving rates of return and management experience, each of which relate to the offering’s profitability, were also material. *Murphy*, 626 F.2d at 653 (“[s]urely the materiality of information relating to financial condition, solvency, and profitability is not subject to serious challenge”); *CFTC v. Next Fin. Servs. Unlimited, Inc.*, 2006 U.S. Dist. LEXIS 19451 (S.D. Fla. Mar. 30, 2006) (trading experience material “because a reasonable investor would have considered these factors important when making an investment decision”).

Further, the investors in this case testified that they would have considered it important in their investment decision to know that funds raised from KT 50 investors were being used to pay personal expenses or other KT 50 investors. (SUF Nos. 59-60; Dean Decl., Ex. 55 at 65:13-20; Ex. 56 at 88:14-89:22; Ex. 58 at 88:1-23; Ex. 59 at 40:19-41:25, 42:21-43:13.) The misrepresentations shown by the SEC are so clearly important to investors that summary judgment on the question of materiality is appropriate. *See SEC v. Credit Bancorp, Ltd.*, 195 F. Supp. 2d 475, 292 (S.D.N.Y. 2002).

3.3.3 Liability for Statements

Wayland, KT 50, and HP are liable under Rule 10b-5(b) for the misrepresentations because they had “ultimate authority” over them. *See Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135, 142 (2011). Wayland reviewed and revised written documents for the KT 50 offering, communicated with KT 50 salespeople, and helped distribute the PPM and Executive Summary. (SUF Nos. 45-49.) Each of these actions demonstrates ultimate authority over the false statements. Unlike Rule 10b-5(b), Section 17(a)(2) of the Securities Act doesn’t require the SEC to show that Wayland, KT 50, or HP “made” any false statements directly, only that they derived profits from the scheme to defraud. *See, e.g., SEC v. Big Apple Consulting, USA, Inc.*, 783 F.3d 786, 797 (11th Cir. 2015) (Section 17(a)(2) requires showing that defendant obtained money by means of an untrue statement, which includes a broader range of conduct than making a false statement). The SEC has thus shown, through uncontroverted evidence of Defendants’ making false statement and deriving money from them, that Wayland, KT 50, and HP are liable for the misrepresentations.

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CENTRAL DISTRICT OF CALIFORNIA

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3.3.4 Scheme to Defraud

The SEC has also proved that Wayland, KT 50, HP, and CAR engaged in a scheme to defraud. In the Ninth Circuit, scheme liability requires that the defendant engaged in deceptive acts that had “the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme.” *SEC v. Baccam*, 2017 U.S. Dist. LEXIS 88450 *16 (C.D. Cal., June 8, 2017) (quoting *Burnett v. Rowzee*, 561 F. Supp 2d 1120 (C.D. Cal. 2008)). The scheme alleged here is that Defendants raised funds purportedly for oil well projects, misrepresented the profitability of the offering and allocation of funds, and made Ponzi payments to investors. (SUF Nos. 50-63.) The SEC has shown that Defendants then used proceeds for personal expenses. Such conduct is sufficient to establish scheme liability. *See SEC v. Small Business Capital*, 2013 U.S. Dist. LEXIS 159227 (N.D. Cal., Aug. 6, 2013), at *14-24 (granting summary judgment on allegations that defendant used investor funds to pay expenses in violation of representations in offering documents).

3.3.5 Scienter

Next, Wayland’s misappropriation of investor money for personal use is sufficient proof of scienter. *See, e.g., United States v. Booth*, 309 F.3d 566, 575 (9th Cir. 2002) (misuse of client funds is probative of both scheme and intent to defraud). Since Wayland was ultimately responsible for the statements made to investors, and since she controlled the bank accounts that she and Mueller used to misappropriate funds, she either knew or was reckless or negligent in not knowing that those statements were false. The rate returns couldn’t be accurate, for example, when she knew investors’ money wasn’t going to oil projects.

To the extent direct evidence of Wayland’s scienter is light, it bears noting that Wayland has invoked her Fifth Amendment right against self-incrimination, limiting the SEC’s ability to gather evidence. (SUF No. 82.) However, the circumstantial evidence of her intent to defraud is sufficient to satisfy the scienter element here. It is thus unnecessary for the Court to draw an adverse inference from Wayland’s invocation of the Fifth Amendment.

The SEC has shown that there is no dispute of material fact regarding violation of the antifraud provisions of the Securities Act (Section 17(a)) and the Exchange Act (Section 10(b))

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and Rule 10b-5). The Court GRANTS summary judgment on these claims in favor of the SEC.

3.4 The Requested Relief

3.4.1 Injunction

A permanent injunction may be granted under Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d)(1), in an enforcement action brought by the SEC. To obtain an injunction, the SEC must establish that there is “a reasonable likelihood of future violations of the securities laws.” *S.E.C. v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980). Whether a likelihood of future violations exists depends upon the totality of the circumstances. *Id.* The existence of past violations may give rise to an inference that there will be future violations. *Id.* But “[t]he fact that illegal conduct has ceased does not foreclose injunctive relief.” *S.E.C. v. Koracorp Indus., Inc.*, 575 F.2d 692, 698 (9th Cir. 1978). Courts consider factors such as “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 . . . that future violations might occur; and the sincerity of his assurances against future violations.” *Murphy*, 626 F.2d at 655.

The SEC hasn’t offered sufficient evidence for the Court to issue a permanent injunction at this time. It is unclear from their summary judgment briefing whether the Defendants are still engaged in the conduct at issue in this case or what the likelihood of repeat violations may be. The Court DENIES the SEC’s request for a permanent injunction.

3.4.2 Disgorgement

The Court has “broad equity powers to order the disgorgement of ill-gotten gains obtained through the violation of the securities laws. Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable.” *SEC v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010). The amount of disgorgement should include all gains from the illegal activities. *Id.* “Disgorgement

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need be ‘only a reasonable approximation of profits causally connected to the violation.’” *Id.* (quoting *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir.1998)).

Here, the disgorgement figure satisfies the reasonable approximation standard. The SEC seeks disgorgement of each Defendant’s personal gain from investors’ money. Specifically, the SEC seeks \$464,665 from Wayland (the amount she misappropriated), and \$198,478, \$160,751, and \$59,461 from Dow, Liss, and Blasko (respectively), the amounts of their sales commissions. *See* SUF Nos. 36, 40, 43, 55. These amounts are well documented in the Declarations of Lorraine Pearson. *See, e.g.*, Pearson Decl. ¶ 17 (“According to the analysis, Wayland’s personal expenses were \$413,211, her cash withdrawals were \$166,263, and her share of the deposits which did not represent investor funds was \$114,809, for a net total of \$464,665.) The amounts are calculated based on Pearson’s analysis of “account statements, account opening documents, signature cards, wire transfers, deposit slips and copies of items deposited, checks, withdrawal slips and bank account transfers,” and also her “conduct related inquiries and investigations.” (*Id.* ¶¶ 3-4.)

The prejudgment interest amount is also appropriate. Disgorgement normally includes prejudgment interest to ensure that wrongdoers do not profit from their illegal conduct. *See SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972); *Cross Fin. Services*, 908 F. Supp. at 734. The SEC used the post-judgment rate of interest prescribed by 28 U.S.C. § 1961 to calculate prejudgment interest. (Lynn Dean Decl. (Dkt. 63) at ¶ 64.) The SEC calculated that from February 2016 to March 2019, the prejudgment interest on the SEC-recommended disgorgement amounts is \$64,057.72 for Wayland, \$27,361.75 for Dow, \$22,160.78 for Liss, and \$59,461 for Blasko. (*Id.* ¶ 64, Exs. 69-72.)

The Court GRANTS the SEC’s requests for disgorgement and prejudgment interest.

3.4.3. Civil Penalties

Due to their violations, Defendants are liable for penalties under Section 20(d)(1) of the Securities Act and Section 21(d)(3) of the Exchange Act. 15 U.S.C. §§ 77t(d)(1), 78u(d)(3)(A). Civil penalties are meant to serve the dual goals of punishing wrongdoers and deterring others from committing future securities law violations. *S.E.C. v. Kenton Capital, Ltd.*, 69 F. Supp. 2d

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1, 17 (D.D.C. 1998). Under Section 20(d)(2)(A) of the Securities Act and Section 21(d)(3)(B) of the Exchange Act, the amount of any civil penalty “shall be determined by the court in light of the facts and circumstances.” 15 U.S.C. §§ 77t(d)(2)(A), 78u(d)(3)(B).

The factors courts consider when awarding civil penalties are: (i) the degree of scienter; (ii) the isolated or recurrent nature of the infraction; (iii) the defendant’s recognition of the wrongful nature of his conduct; (iv) the likelihood, because of the defendant’s professional occupation, that future violations might occur; and (v) the sincerity of his assurances against future violations. *See Murphy*, 626 F.2d at 655; *see also CMKM Diamonds*, 635 F. Supp. 2d at 1192.

The Securities Act and the Exchange Act provide a three-tier system. Second-tier penalties apply to violations that “involved fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement.” *See* 15 U.S.C. §§ 77t(d)(2)(B), 78u(d)(3)(B)(ii). Third-tier penalties apply to violations that (i) involve “fraud, deceit, manipulation, or reckless disregard of a regulatory requirement” and (ii) “directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.” *Id.* §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii). The statute also provides for a penalty equal to “the gross amount of pecuniary gain to such defendant as the result of the violation.” *Id.* §§ 77t(d)(2), 78u(d)(3)(B). For second-tier penalties involving violations that occurred between 2014 and 2016, the statutory amount, adjusted for inflation, is \$80,000 for natural persons. *Id.* §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii); 17 C.F.R. § 201.1003 (SEC rule setting forth inflation adjustments).

Regarding the first requirement, Wayland’s, Dow’s, Liss’s, and Blasko’s business practices were fraudulent, deceitful, and manipulative and resulted in loss to other persons. *See, e.g. CMKM Diamonds, Inc.*, 635 F. Supp. 2d at 1191-92. But the SEC hasn’t engaged with the other factors from *Murphy* sufficient to justify the specific penalties sought here. The SEC must present more than a conclusory recitation of the factors, and may do so through a separate motion, if it so chooses. The Court DENIES the SEC’s request for civil penalties.

4. DISPOSITION

Any facts, arguments, or authorities not addressed in this order were found unnecessary to the Court’s analysis and conclusions here.

EXHIBIT 4

EXHIBIT 5

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CAROL J. WAYLAND, JOHN C.
MUELLER, KENTUCKY-
TENNESSEE 50 WELLS/400 BBLPD
BLOCK, LIMITED PARTNERSHIP,
HP OPERATIONS, LLC, C.A.R.
LEASING, LLC, MITCHELL B.
DOW, BARRY LISS, AND STEVE G.
BLASKO,

Defendants.

Case No. 8:17-cv-01156-AG (DFMx)

**FINAL JUDGMENT AS TO
MITCHELL B. DOW**

1 This matter came before the Court upon Plaintiff Securities and Exchange
2 Commission's ("SEC") Motion for Summary Judgment against defendants Kentucky-
3 Tennessee 50 Wells/400 BBLPD Block, Limited Partnership, HP Operations, LLC,
4 C.A.R. Leasing, LLC, Carol J. Wayland, Mitchell B. Dow, Barry Liss, and Steve G.
5 Blasko, made pursuant to Federal Rule of Civil Procedure 56. The Court having
6 considered the memoranda and evidence filed by the parties, and all other argument
7 and evidence presented to it, and good cause appearing therefor, granted the SEC's
8 Motion on April 8, 2019.

9 On April 18, 2019, the SEC submitted a Supplemental Memorandum of Points
10 and Authorities in support of its motion for permanent injunctions and civil penalties.
11 The Court having considered the memoranda and evidence submitted by the SEC,
12 and all other argument and evidence presented to it, and good cause appearing
13 therefor, grants the SEC's Motion and enters this Final Judgment as to Mitchell B.
14 Dow ("Defendant").

15 I.

16 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
17 Defendant is permanently restrained and enjoined from violating Section 5 of the
18 Securities Act of 1933 [15 U.S.C. § 77e] ("Securities Act") by, directly or indirectly,
19 in the absence of any applicable exemption:

- 20 (a) Unless a registration statement is in effect as to a security, making use of
21 any means or instruments of transportation or communication in
22 interstate commerce or of the mails to sell such security through the use
23 or medium of any prospectus or otherwise;
- 24 (b) Unless a registration statement is in effect as to a security, carrying or
25 causing to be carried through the mails or in interstate commerce, by any
26 means or instruments of transportation, any such security for the purpose
27 of sale or for delivery after sale; or
- 28 (c) Making use of any means or instruments of transportation or

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

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

14 II.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
16 Defendant is permanently restrained and enjoined from violating Section 15(a) of the
17 Exchange Act [15 U.S.C. § 78o(a)] (“Exchange Act”), in connection with the
18 purchase or sale of a security, by the use of means or instrumentalities or interstate
19 commerce, of the mails, or of the facilities of a national securities exchange, directly
20 or indirectly effecting transactions in, or inducing or attempting to induce the
21 purchase or sale of, securities without being registered with the SEC, or affiliated
22 with a broker-dealer registered with the SEC.

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

1 III.

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
3 is liable for disgorgement of \$198,478, representing profits gained as a result of the
4 conduct alleged in the Complaint, together with prejudgment interest thereon in the
5 amount of \$27,361.75, and a civil penalty in the amount of \$160,000 pursuant to
6 Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act [15
7 U.S.C. §§ 77t(d), 78u(d)(3)]. Defendant shall satisfy this obligation by paying
8 \$385,839.75 to the Securities and Exchange Commission within 14 days after entry
9 of this Final Judgment.

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

16 Enterprise Services Center
17 Accounts Receivable Branch
18 6500 South MacArthur Boulevard
19 Oklahoma City, OK 73169

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

23 Defendant shall simultaneously transmit photocopies of evidence of payment
24 and case identifying information to the Commission's counsel in this action. By
25 making this payment, Defendant relinquishes all legal and equitable right, title, and
26 interest in such funds and no part of the funds shall be returned to Defendant. The
27 Commission shall send the funds paid pursuant to this Final Judgment to the United
28 States Treasury.

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

6 IV.

7 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
8 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
9 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant,
10 and further, any debt for disgorgement, prejudgment interest, civil penalty or other
11 amounts due by Defendant under this Final Judgment or any other judgment, order,
12 consent order, decree or settlement agreement entered in connection with this
13 proceeding, is a debt for the violation by Mitchell B. Dow of the federal securities
14 laws or any regulation or order issued under such laws, as set forth in Section
15 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

16 V.

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

20 VI.

21 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
22 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith
23 and without further notice.

24 Dated: May 7, 2019

25
26 
27 HON. ANDREW J. GUILFORD
28 UNITED STATES DISTRICT JUDGE

EXHIBIT 6

CLOSED, TRANSFERRED

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA
(Southern Division - Santa Ana)
CRIMINAL DOCKET FOR CASE #: 8:98-cr-00155-AHS-2

Case title: USA v. Mortinson, et al

Date Filed: 12/15/1998

Date Terminated: 09/20/1999

Assigned to: Judge Alicemarie H. Stotler

Defendant (2)**Mitchell Brian Dow***TERMINATED: 09/20/1999*represented by **Michael Ian Garey**

Michael I Garey Law Offices

714 North Spurgeon Street

Santa Ana, CA 92701

714-834-0950

Fax: 714-571-0867

Email: mig995@aol.com

*TERMINATED: 09/20/1999**LEAD ATTORNEY**ATTORNEY TO BE NOTICED**Designation: CJA Appointment***Pending Counts**18:1343: WIRE FRAUD
(16-17)**Disposition**

Dft is sentenced to 24 months jail, conc. Upon release frm impris placed on supvd release for 3 yrs, conc under following T/C: Comply w/the r & r of the USPO and GO 318; All fines are waived; Pay \$200 S/A; Pay restrn in total amt of \$74,941. 99.

Highest Offense Level (Opening)

Felony

Terminated Counts18:1343: WIRE FRAUD
(1-15)18:1343: WIRE FRAUD
(18-28)**Disposition**

On govt's motn, remaining cts ord disp.

On govt's motn, remaining cts ord disp.

Highest Offense Level (Terminated)

Felony

Complaints

None

Disposition**Plaintiff**

USA

represented by **Elizabeth R Yang**

AUSA - Office of US Attorney
 Criminal Division - US Courthouse
 312 North Spring Street 12th Floor
 Los Angeles, CA 90012-4700
 213-894-1785
 Fax: 213-894-3713
 Email: Elizabeth.Yang@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/15/1998	1	INDICTMENT filed against Jeff James Mortinson (1) count(s) 1-28, Mitchell Brian Dow (2) count(s) 1-28, Michael Keith Engelbart (3) count(s) 1-28, Donald Chad Foster (4) count(s) 1-28 filed by AUSA Gregory W Jessner. Offense occurred in OC. (mt) (Entered: 12/17/1998)
12/15/1998	3	CASE SUMMARY filed by AUSA Watford, attorney for USA, as to Mitchell Brian Dow . Defendant's date of birth: 9/4/62. (mt) (Entered: 12/18/1998)
12/15/1998		BENCH WARRANT issued for Mitchell Brian Dow by Magistrate Judge Ralph Zarefsky Bail set in the amount of \$50,000 A/B (mt) (Entered: 12/18/1998)
12/15/1998	6	MEMORANDUM filed by USA as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster . This criminal action, being filed on 12/15/98, was not pending in the U.S. Attorney's Office before 11/2/98, the date on which U.S. District Judge Lourdes G. Baird began receiving criminal matters. (mt) (Entered: 12/18/1998)
12/15/1998	7	MEMORANDUM filed by USA as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster . This criminal action, being filed on 12/15/98, was pending in the U.S. Attorney's Office before 12/22/98, the date on which U.S. District Judge Nora M. Manella began receiving criminal matters. (mt) (Entered: 12/18/1998)
12/15/1998	8	NOTICE RELATED CRIMINAL CASE filed by USA as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster . Low number case: SACR98-97-AHS. (mt) (Entered: 12/18/1998)
12/17/1998	27	REPORT COMMENCING CRIMINAL ACTION as to Mitchell Brian Dow arrested on 12/17/98 Defendant's date of birth: 9/4/62. (mt) (Entered: 12/29/1998)
12/17/1998	28	

		MINUTES OF ARREST ON INDICTMENT HEARING held before Magistrate Judge Elgin C. Edwards as to Mitchell Brian Dow : First appearance of Mitchell Brian Dow entered. CJA Attorney Michael I Garey present. Bail set in the amount of \$40,000 A/B, with following conditions of release: w/afdt of surety no just signed by Debra Dow; PSA supv int; travel restricted to CDC; avoid places of egress; not illegally use or possess drugs or be in the presence of anyone illegally using or possessing drugs; not possess firearms or be in the presence of anyone using; mental health cnslg - prozac attend AA & NA; no telemarketing; maintain employment. Post indictment arraignment set for 10:00am on 12/21/98. Tape No.: SA98-63 (mt) (Entered: 12/29/1998)
12/17/1998	29	NOTICE DIRECTING Defendant To Appear for Arraignment on Indictment/Information filed as to Mitchell Brian Dow . (mt) (Entered: 12/29/1998)
12/17/1998	30	FINANCIAL AFFIDAVIT filed as to Mitchell Brian Dow (mt) (Entered: 12/29/1998)
12/18/1998	31	BOND AND CONDITIONS OF RELEASE filed as to Mitchell Brian Dow, in the amount of: \$40,000 A/B. Conditions of Release w/afdt of surety no just signed by Debra Dow; travel restricted to CDC; PSA supv int; not to use illegal drugs and are to cooperate w/PSA in a drug treatment and testing program; avoid egress areas; no firearms; mental health cnslg - use prozac AA & NA meetings; no telemarketing; cont employment - provide proof. Approved by Magistrate Judge Arthur Nakazato. Rel ord #22176. (mt) (Entered: 12/29/1998)
12/18/1998	32	AFFIDAVIT OF SURETIES (No Justification - Pursuant to Local Criminal Rule 5.2.8) filed as to Mitchell Brian Dow in the amount of \$40,000, by Surety: Mason G Dow (brother) for bond [31-1] . (mt) (Entered: 12/29/1998)
12/18/1998	33	AFFIDAVIT OF SURETIES (No Justification - Pursuant to Local Criminal Rule 5.2.8) filed as to Mitchell Brian Dow in the amount of \$40,000, by Surety: Debra A Dow (wife) for bond [31-1] . (mt) (Entered: 12/29/1998)
12/21/1998	37	MINUTES OF POST-INDICTMENT ARRAIGNMENT HEARING held before Magistrate Judge Arthur Nakazato as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster : Dft Engelbart advised of consequences of false stmt on financial afdt. Jeff James Mortinson (1) count(s) 1-28, Mitchell Brian Dow (2) count(s) 1-28, Michael Keith Engelbart (3) count(s) 1-28, Donald Chad Foster (4) count(s) 1-28 arraigned and states true name as chrgd. DFPD Attorney Leon Peterson, CJA atty Michael Garey, CJA atty John W Barton, CJA atty William Dougherty present. Plea not guilty entered by Jeff James Mortinson (1) count(s) 1-28, Mitchell Brian Dow (2) count(s) 1-28, Michael Keith Engelbart (3) count(s) 1-28, Donald Chad Foster (4) count(s) 1-28. Crt ord jury trial set for 8:30am on 2/9/99. Pretrial conf set for 8:30am on 2/8/99. All motns are t/b ntc for 2/1/99 at 8:30am. Dfts and cnsl are ord to appr. TRIAL ESTIMATE is 5-7 days. DETN HRG held as to dft Engelbart. Crt sets bail in the amt of \$50,000 A/B w/afdt of surety signed by dft's mother, Helen Engelbart w/following conds of release: travel restricted to CDC; PSA supv int; avoid places of egress; do not change address w/out pre-approval of PSA; notify PSA of any special assign for work. Tape No.: SA-62 (mt) Modified on 12/29/1998 (Entered: 12/29/1998)
12/21/1998	39	STATEMENT OF DEFENDANT'S CONSTITUTIONAL RIGHTS filed as to Mitchell Brian Dow . (mt) (Entered: 12/29/1998)
12/28/1998	47	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 224 (Related Case) filed as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster . (Related Case No.: SACR98-97-AHS) Case transferred from Judge Linda H. McLaughlin to

		Judge Alicemarie H. Stotler for all further proceedings. The case number will now reflect the initials of the reassigned judge, (SACR98-155-AHS). (mt) (Entered: 01/11/1999)
01/14/1999	48	MINUTES OF IN CHAMBERS HEARING held before Judge Alicemarie H. Stotler as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster : Resched of the pretrial conf on 2/8/99 frm 8:30 to 1:30pm. The trial is resched on 2/9/99 frm 8:30am to 10:00am. All cnsl and dfts are ord t/b present. C/R: n/a (mt) (Entered: 01/27/1999)
01/26/1999	49	EX PARTE APPLICATION filed by USA as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster for order re excludable time periods under the speedy trial act Lodged ord (mt) (Entered: 02/01/1999)
02/02/1999	50	ORDER filed by Judge Alicemarie H. Stotler as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster : granting ex parte application for order re excludable time periods under the speedy trial act [49-1] (cc: all counsel) (mt) (Entered: 02/08/1999)
02/02/1999	52	STIPULATION AND ORDER filed by Judge Alicemarie H. Stotler as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster : re cont of trial dt and excl ti periods under speedy trial act; findings; Jury trial contd to 10:00am on 4/13/99. Pretrial conf contd to 1:30pm on 4/12/99. (mt) (Entered: 02/08/1999)
02/02/1999	53	EXCLUDABLE DELAY FORM as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart (mt) (Entered: 02/08/1999)
03/18/1999	55	STIPULATION AND ORDER filed by Judge Alicemarie H. Stotler as to Mitchell Brian Dow : modifying conditions of release that Debra A Dow, who has heretofore acted as surety in the amt of \$40,000. is relieved of any and all oblig as surety on the bond in this matter. All other cond of release, and sureties are to remain the same. (mt) (Entered: 03/23/1999)
03/26/1999	58	NOTICE OF MOTION AND MOTION filed by Mitchell Brian Dow to quash warrant ; & to suppress evidence ; memo of P&A's; decl of dft. Returnable on: 4/13/99 8:30am. (mt) (Entered: 03/29/1999)
03/26/1999	59	EX PARTE APPLICATION filed by USA as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster for order permitting rel of grand jury transcripts ; memo of P&A's (mt) (Entered: 03/31/1999)
03/29/1999	60	MEMORANDUM filed by USA as to Mitchell Brian Dow in opposition [58-2] (mt) (Entered: 03/31/1999)
03/30/1999	61	DECLARATION of Mitchell Brian Dow FILED by Mitchell Brian Dow (mt) (Entered: 03/31/1999)
04/01/1999	63	ERRATA OF NTC OF MOTN filed by Mitchell Brian Dow in support [58-1], [58-2] (mt) (Entered: 04/09/1999)
04/01/1999	64	ORDER filed by Judge Alicemarie H. Stotler as to Jeff James Mortinson, Mitchell Brian Dow, Michael Keith Engelbart, Donald Chad Foster : granting ex parte application for order permitting rel of grand jury transcripts [59-1] (cc: all counsel) (mt) (Entered: 04/09/1999)
04/05/1999	65	PLEA AGREEMENT filed by USA as to Mitchell Brian Dow (mt) (Entered: 04/09/1999)
04/05/1999	67	MINUTES OF CHANGE OF PLEA HEARING held before Judge Alicemarie H. Stotler as to Mitchell Brian Dow : Defendant moves to change plea to the indictment. Plea of guilty

		entered by Mitchell Brian Dow (2) count(s) 16-17. The Court questions the defendant regarding plea of guilty and finds it knowledgeable and voluntary and orders the plea accepted and entered. The Court refers Mitchell Brian Dow to the Probation Office for investigation and report. Sentencing hearing set for 1:30pm on 9/20/99. Crt fur ord trial dt of 4/13/99 vacated. C/R: K Haaland (mt) (Entered: 04/09/1999)
08/13/1999	85	NOTICE OF MOTION filed by Mitchell Brian Dow to set a hearing date . Returnable on: 8/23/99 3:00pm. (mt) (Entered: 08/16/1999)
08/23/1999	88	NOTICE RE: DOCUMENT WITHHELD FROM CASE FILE - filed by USA as to Mitchell Brian Dow (mt) (Entered: 08/30/1999)
09/07/1999	90	ORDER filed by Judge Alicemarie H. Stotler as to Jeff James Mortinson : granting ex parte application to continue sentcg hrg [89-1] to 1:30pm on 11/29/99 for Jeff James Mortinson (cc: all counsel) (mt) (Entered: 09/08/1999)
09/07/1999	91	POSITION RE SENTENCING; MEMO IN SUPPORT THEREOF; OBJECTIONS TO PRESENTENCE REPORT filed by Mitchell Brian Dow (mt) (Entered: 09/08/1999)
09/13/1999	92	NOTICE RE: DOCUMENT WITHHELD FROM CASE FILE - filed by USA as to Mitchell Brian Dow (mt) (Entered: 09/23/1999)
09/20/1999	93	MINUTES OF SENTENCING held before Judge Alicemarie H. Stotler as to Mitchell Brian Dow (2) count(s) 16-17. Dft is sentenced to 24 months jail, conc under following T/C: Comply w/the r & r of the USPO and GO 318; All fines are waived; Pay \$200 S/A due immed; Pay restn in total amt of \$74,941.99. The dft w/b held jointly & severally liable for \$74,941.99, along w/his convicted co-participants. Purs to dft's req, crt recommends to the BOP that dft be incarcerated in So CA institution. On govt's motn, remaining cts ord dism. Bond exonerated. Court advised Mitchell Brian Dow of right to appeal. Dft remanded to the custody of the USM this dt. C/R: Walter Ledge (mt) (Entered: 09/29/1999)
09/22/1999	94	JUDGMENT AND COMMITMENT issued to U.S. Marshal for Mitchell Brian Dow with Statement of Reasons Approved by Judge Alicemarie H. Stotler . Entered on: 9/29/99. (mt) (Entered: 09/29/1999)
10/14/1999	95	AMENDED JUDGMENT AND COMMITMENT issued to U.S. Marshal for Mitchell Brian Dow with Statement of Reasons Approved by Judge Alicemarie H. Stotler . Entered on: 10/18/99. (mt) (Entered: 10/18/1999)
02/11/2000	107	RECEIPT for Transcripts of proceedings held on: 4/5/99, 11/29/99 C/R: K Haaland (mt) (Entered: 02/17/2000)
02/11/2000		TRANSCRIPT filed for proceedings held on 4/5/99 as to Jeff James Mortinson, Mitchell Brian Dow . (mt) (Entered: 02/17/2000)
09/06/2000		RECORD ON APPEAL FORWARDED TO USCA 2 volumes original clerks file, 2 volumes C/R transcripts, exhibits: n, (99-50783) (weap) (app) (Entered: 09/06/2000)
01/19/2001	111	RECORD on Appeal returned from 9th CCA 2 volumes original clerks file, 2 volumes C/R transcripts, exhibits returned: n (dl) (app) (Entered: 01/24/2001)
03/05/2001	115	MOTION filed by Mitchell Brian Dow to vacate, set aside or correct sentence by a person in federal custody 28 USC 2255. (SACV01-274) (ts) (Entered: 03/08/2001)
03/05/2001	116	

		MEMORANDUM filed by Mitchell Brian Dow in support of motion to vacate, set aside or correct sentence [115-1] (ts) (Entered: 03/08/2001)
03/07/2001	117	ERRATA NOTICE OF MISSING PAGES IN MOVANT'S MEMORANDUM filed by Mitchell Brian Dow (ts) (Entered: 03/12/2001)
03/26/2001	119	ORDER SETTING BRIEFING SCHEDULE FOR MOT TO CORRECT SENT filed by Judge Alicemarie H. Stotler as to Mitchell Brian Dow: On 3/5/01, dft/petr filed mot to vac, set aside or correct sent. Purs to Rule 4 governing 2255 procs, the Crt set the briefing schedule. Clk is directed to serve petr's mot on the AUSA. Gov shall file & serve its response NLT 5/7/01. Petr's reply, if any, shall be filed & svd NLT 6./11/01. No oral arg on the mot will be heard unless otherwise ord by the Crt. (cc: all counsel) (ts) (Entered: 03/28/2001)
04/27/2001	122	EX PARTE APPLICATION filed by USA as to Mitchell Brian Dow for order extending time for file a response to dft's motion to vacate. Lodged prospd ord. (ts) (Entered: 05/01/2001)
05/04/2001	123	ORDER filed by Judge Alicemarie H. Stotler as to Mitchell Brian Dow: granting ex parte application for order extending time for file a response to dft's motion to vacate. [122-1] Gov's response due NLT 6/11/01. Pet's reply, if any, shall be filed NLT 7/23/01. (cc: all counsel) (ts) (Entered: 05/07/2001)
05/07/2001	124	NOTICE OF CHANGE OF Address filed re Mitchell Dow. Effective 6/1/01, the dft's address will be c/o Carla Cushman, 1351 Brentlinger Rd, Harrod OH 45850. (ts) (Entered: 05/08/2001)
06/08/2001	125	RESPONDENT'S MOTION filed by USA as to Mitchell Brian Dow to dismiss dft's 28 USC 2255 Motion ; Memo of PA; Proposd order. (ts) (Entered: 06/12/2001)
06/20/2001	126	NOTICE OF DISCREPANCY AND ORDER by Judge Alicemarie H. Stotler as to Mitchell Brian Dow Document Gov's mot to dismiss ordered filed and processed. (ts) (Entered: 06/28/2001)
06/20/2001	127	MOTION filed by USA as to Mitchell Brian Dow to dismiss dft's 28:2255 Motion ; Memo of PA; prospd ord. (ts) (Entered: 06/28/2001)
07/19/2001	128	BENCH WARRANT returned executed as to Mitchell Brian Dow 12/17/98 (ts) (Entered: 07/20/2001)
07/23/2001	130	DFT'S TRAVERSE filed by Mitchell Brian Dow to the Plf's response memorandum to motion to vacate, set aside or correct sentence [115-1] (ts) (Entered: 07/24/2001)
10/17/2001	133	ORDER filed by Judge Alicemarie H. Stotler as to Mitchell Brian Dow: denying motion to vacate, set aside or correct sentence [115-1] & order denying cert of appealability (cc: all counsel) (ts) (Entered: 10/19/2001)
12/03/2001	134	Transfer of Jurisdiction (PROB 22) sent to USDC, Northern District of Ohio, Akron as to Mitchell Brian Dow. (th) (Entered: 12/05/2001)
01/11/2002	135	RECEIPT AND ACKNOWLEDGEMENT OF PROBATION TRANSFER filed as to Mitchell Brian Dow from USDC Northern of Ohio at Cleveland. Transfer Case No.: 3 01 CR 800. (th) (Entered: 01/23/2002)
01/30/2002	136	RECEIPT AND ACKNOWLEDGEMENT OF PROBATION TRANSFER filed as to Mitchell Brian Dow from USDC Northern of Ohio at Cleveland. Transfer Case No.: 3 OR CR 800. (th) (Entered: 02/14/2002)

PACER Service Center			
Transaction Receipt			
01/23/2017 13:08:31			
PACER Login:	se5718:3642181:4043519	Client Code:	
Description	Docket Report	Search Criteria:	8:98-cr-00155-AHS End date: 1/23/2017
Billable Pages:	5	Cost:	0.50

EXHIBIT 7

From: Jodi HP <jodi@hpopoperations.info>
Sent: Monday, June 22, 2015 5:46 PM
To: Dave Baker
Subject: Re: Fwd: Fwd: Royalty Interest forms scan

Hi Mitch,
Thanks, received it and will put his name on the list to be recorded.

Jodi

On 6/22/2015 2:07 PM, Dave Baker wrote:

>
>
>

> ----- Forwarded Message -----

> Subject: Fwd: Royalty Interest forms scan
> Date: Mon, 22 Jun 2015 17:05:40 -0400
> From: Josh Denton <joshadenton@gmail.com>
> To: Dave Baker <info@saharawealth.com>

>
>
>

> Dave,

>

> Attached is signed Royalty Interest Form.

> - Josh

>

> ----- Forwarded message -----

> From: *Christy Bazzano* <christy.storageone@gmail.com>
> <mailto:christy.storageone@gmail.com>
> Date: Mon, Jun 22, 2015 at 5:03 PM
> Subject: Royalty Interest forms scan
> To: Josh Denton <joshadenton@gmail.com <mailto:joshadenton@gmail.com>>

>

>

> *Christy Bazzano*
> *Office Manager*
> *Storage One*
> *Wateree Lake **RV Park & Marina*
> *338 Sumter Highway*
> *Camden, SC 29020*
> *803-713-9912 <tel:803-713-9912>*

>

> --

> Thanks,

> Josh

> 843-425-9008

> joshadenton@gmail.com <mailto:joshadenton@gmail.com>

>
>
> --
> Regards, Dave Baker Sahara Wealth Advisors 949-861-8269 SAHARA WEALTH
> ADVISORS 1801 Von Karman Irvine, CA 92612 Direct Phone: 949-861-8269
> WEB SITE: www.saharawealth.com

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>

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Jodi-Director of Royalty Disbursements

HP Operations

270-715-0460

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