UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19720

In the Matter of DANIEL B. VAZQUEZ, SR., Respondent.	DECLARATION OF LYNN M. DEAN IN SUPPORT OF DIVISION OF ENFORCEMENT'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AND REMEDIAL SANCTIONS

I, Lynn M. Dean, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney admitted to practice law by the State Bar of California. I am currently a Senior Trial Counsel in the Los Angeles Regional Office of the SEC. I am the attorney assigned to this matter. I have personal knowledge of the matters set forth below, or knowledge based upon my review of the file, and, if called as a witness, could and would testify competently thereto under oath.

2. At the time these proceedings were commenced, Daniel Vazquez was incarcerated in a Federal Bureau of Prisons ("BOP") facility located in Adelanto, California. I directed that he be served at that addresses in accordance with Commission Rule of Practice 141(a)(2). Respondent did not appear or respond to the OIP. I was able to obtain confirmation that the OIP was delivered to the prison, but was unable to obtain to confirm that Vazquez had personally received the OIP.

3. On July 13, 2021, the General Counsel's office issued an Order in which it directed the Division to provide status reports regarding its efforts to serve Respondent. Upon receipt of the July 13, 2021 Order, I conducted a new search of Respondent's whereabouts and

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learned that he had been transferred to the custody of Keeton Corrections, a BOP contractor, in Jacksonville, Florida.

4. On July 23, 2021, I directed that the OIP be served on Respondent at his address in Florida by UPS Overnight delivery. I received confirmation of delivery on July 26, 2021 and provided it in a status report dated July 27, 2021. On July 29, 2021, the General Counsel's office issued an Order in which it noted that the Commission's Rules of Practice do not provide for service of Orders Instituting Proceedings through commercial courier or express delivery service. The Division was directed to provide monthly status updates on its further efforts to serve Respondent.

5. On August 2, 2021, I attempted to confirm Respondent's continuing residence at Keeton Corrections in Jacksonville by telephoning the facility. The individual who answered the phone there declined to provide her name or any information regarding Respondent and directed me to contact a different Keeton facility in Ocala, Florida. After several phone calls over several days, I was informed that by Keeton Corrections that Respondent had likely been transferred to a different transitional housing provider, Bridges of America, in Lake City, Florida, on August 1, 2021.

6. On August 24, 2021, I attempted to confirm Respondent's residence and mailing address in Lake City, Florida by telephoning the Bridges facility there. I was informed by the person answering the Defendant had been released, a fact I independently confirmed on the BOP inmate locator website. I requested a forwarding address from the Lake City, Florida facility and was referred to another Bridges office in Lake City. On August 26, 2021, I spoke to Ms. Henesman at that office by telephone, who told me it was impossible to look up Respondent without a six digit Florida Department of Corrections ("DOC") number. I explained that Respondent was a federal, rather than state prisoner, but Ms. Henesman insisted she could not locate any records without a DOC number. I ran a search of the Florida DOC database at Offender Information Search (state.fl.us) and found no records hits for Respondent.

7. On August 26, 2021, I asked the paralegal assigned to this this matter to run a

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CLEAR database report on Respondent. I called all of the recent telephone numbers listed on the report. All of the numbers were out of service but one. That person answering that number identified himself to me as David Vazquez, Respondent's brother. I spoke to Mr. Vazquez and explained I was trying to locate his brother to give him notice of this action. Mr. Vazquez declined to provide contact information for Respondent, though he did agree to pass him a message.

8. I had planned to subpoena David Vazquez for Respondent's address, but attempted another database address search first. That search revealed an address associated with Respondent provided by a utility company in Orange Park, Florida. I contacted Gregory Staples, the Assistant U.S. Attorney responsible for prosecuting Respondent in the parallel criminal action, in an attempt to verify that address. Mr. Staples did not have a current address, but, on September 22, 2021, I directed the paralegal assigned to this matter to serve the OIP by certified U.S. postal mail, return receipt requested on the newly discovered address in Orange Park, Florida.

9. On September 29 2021, I received delivery confirmation for service of the OIP. A true and correct copy of that delivery confirmation was provided to the Secretary's Office on October 21, 2021.

10. On October 29, 2021, the Commission issued an Order to Show Cause ordering Vazquez, by November 12, 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. 93481 (Oct. 29, 2021). The Order further directed that if Vazquez failed to file a response, the Division should file a motion for default and other relief by December 10, 2021. *Id.* Vazquez did not appear or respond to the OSC.

11. A true and correct copy of the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Exch. Act. Rel. 88314 (March 3, 2020) is attached hereto as Exhibit 1.

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12. A true and correct copy of the August 7, 2018 Order on the SEC's Motion for Default Judgment in the in the civil action entitled *Securities and Exchange Commission v. Daniel Vazquez, et al.*, Civil Action Number 8:18−cv−0047 CJC (KESx), in the United States District Court for the Central District of California is attached hereto as Exhibit 2.

13. A true and correct copy of the December 11, 2019 Final Judgment as to Daniel Vazquez is attached hereto as Exhibit 3.

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

Executed this 10th day of December, 2021, in Los Angeles, California.

____
Lynn M. Dean

In the Matter of Daniel B. Vazquez, Sr.
Administrative Proceeding File No. 3-19720
SERVICE LIST

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

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

was served on December 10, 2021, upon the following parties:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090

(By eFAP only)

Mr. Daniel B. Vazquez, Sr.

(By UPS Overnight)

Dated: December 10, 2021

Lynn M. Dean

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EXHIBIT 1

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88314 / March 3, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5455 / March 3, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19720

In the Matter of **DANIEL B. VAZQUEZ, SR.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 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") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Daniel B. Vazquez, Sr. ("Respondent" or "Vazquez").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Vazquez is last known to have resided in Orange County, California. Vazquez has been in federal custody since January 2019. He is the founder and CEO of Hoplon and NEON, and has held Series 7, 9, 10, 23, 31, 63, and 65 qualifications in the past. Vazquez

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held a California insurance license, which became inactive when it expired in July 2016 and was revoked in January 2017. From 1998 through 2016, Vazquez was associated as a registered representative with a series of broker-dealer firms, Vazquez voluntarily resigned from his last firm on or around May 12, 2016, shortly after FINRA notified him of an open investigation involving his firm, Hoplon Financial Group ("Hoplon"). Vazquez failed to provide requested documents to FINRA and, effective September 12, 2016, FINRA permanently barred Vazquez from associating with any FINRA member in any capacity.

B. ENTRY OF THE INJUNCTION

1. On December 11, 2019, a final judgment was entered against Vazquez, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder in the civil action entitled Securities and Exchange Commission v. Daniel Vazquez, et al., Civil Action Number 8:18−cv−0047 CJC (KESx), in the United States District Court for the Central District of California.

2. The Commission's complaint alleged that Vazquez and his firm Hoplon committed fraud with the assistance of Hoplon's COO. In 2011, Vazquez and Hoplon created the New Economic Opportunities Fund I, LLC ("NEON") vehicle to pool investors' funds ostensibly for the purpose of purchasing and flipping residential real estate properties. Vazquez then misused substantial amounts of NEON funds, resulting in a total loss to investors. By engaging in this conduct, Vazquez committed violations of Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

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

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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

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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

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EXHIBIT 2

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **DANIEL B. VAZQUEZ, SR., GILBERT FLUETSCH, and HOPLON FINANCIAL GROUP,** **Defendants.**	**Case No.: SACV 18-00047-CJC(KESx)** **ORDER GRANTING MOTION FOR DEFAULT JUDGMENT AGAINST HOPLON AND DENYING WITHOUT PREJUDICE MOTION FOR DEFAULT JUDGMENT AGAINST VAZQUEZ**

I. INTRODUCTION

Plaintiff, the U.S. Securities and Exchange Commission ("SEC"), brings this action against Defendants Daniel Vazquez, Sr. and Hoplon Financial Group ("Hoplon"), alleging violations of the Securities Act of 1933 ("Securities Act") and the Securities

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Exchange Act of 1934 ("Exchange Act").[1] (Dkt. 1 [Complaint, hereinafter "Compl."].) The SEC now moves for default judgment against Defendants. (Dkts. 24 [Notice of Motion and Motion], 24-1 [Memorandum, hereinafter "Mot."].) For the following reasons, the motion is **GRANTED** as against Hoplon and **DENIED WITHOUT PREJUDICE** as against Vazquez.[2]

II. BACKGROUND

A. Factual Allegations

The SEC alleges the following facts. Vazquez is the founder and chief executive officer of Hoplon. (Compl. ¶ 8.) In 2011, Vazquez and Hoplon established a real estate fund called the New Economic Opportunities Fund I, LLC ("NEON"). (*Id.* ¶ 4.) They then recruited investors for this fund, even though they were not registered independently as broker-dealers. (*Id.* ¶ 84.) The fund was ostensibly established to pool money from investors to buy, refurbish, and resell homes. (*Id.* ¶ 18.) In reality, however, Defendants misused a significant amount of the NEON funds, resulting in a near total loss to investors. (*Id.* ¶¶ 41–66.)

In February 2011, Defendants created a private placement memorandum ("PPM") which was provided to potential investors and outlined how the money in the NEON fund would be used and distributed. (*Id.* ¶¶ 19–28, 30.) According to the PPM, the investments would be used to purchase and renovate real estate. (*Id.* ¶ 22.) Hoplon's compensation for managing the fund was to be strictly limited. (*Id.* ¶ 24.) Hoplon was

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[1] The SEC also named Gilbert Fluetsch, Hoplon's chief operating officer, as a defendant. (Compl.) But Fluetsch consented to an entry of judgment, and a final judgment was entered against him on May 25, 2018. (Dkt. 17.)

[2] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for August 13, 2018, at 1:30 p.m. is hereby vacated and off calendar.

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entitled to only 2% of the total capital raised and 3% of the price of the properties purchased. (*Id.*) Hoplon was also entitled to 10% of the "Cash Available for Distribution," but this was conditioned on NEON investors receiving a return of capital. (*Id.*) Further, according to NEON's Operating Agreement, the NEON funds would not pay for any of Hoplon's overhead expenses. (*Id.* ¶ 25.)

Between 2011 and 2014, Vazquez raised approximately $2.18 million from 27 individual investors, many who invested money from their retirement accounts. (*Id.* ¶¶ 16, 29, 33.) Vazquez gave these investors copies of the PPM before they made their investments and also made oral representations that were consistent with the terms in the PPM. (*Id.* ¶ 30.) Using the investors' money, NEON began purchasing and selling real estate in mid-2012. (*Id.* ¶ 34.) These transactions turned a profit, and generated $917,322 in net proceeds. (*Id.* ¶ 39.) Instead of using these profits to reinvest in new properties or make distributions to investors, however, Defendants diverted the funds to pay Hoplon's business expenses and Vazquez's personal expenses. (*Id.* ¶ 42.) These expenses included car payments on a series of luxury cars used by Vazquez, sports club memberships, and renovations to Vazquez's home. (*Id.* ¶ 49, 60.)

Vazquez never made any payments to the NEON investors, with the exception of one small payment of purported profits to a single investor. (*Id.* ¶ 66.) After their initial investment, the investors received little to no information about their investment or the fund. (*Id.* ¶ 63.) In 2015, a number of investors began asking to withdraw their investments, but at that point the NEON funds had been depleted. (*Id.* ¶ 66.)

B. Procedural History

The SEC filed its Complaint on January 12, 2018. (*Id.*) The SEC brings claims against Defendants for: (1) violations of Section 17(a)(2) of the Securities Act for making

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false and misleading statements in the PPM and NEON's Operating Agreement; (2) violations of Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, for fraud in exchange with the purchase or sale of securities; and (3) violation of Section 15(a) of the Exchange Act for soliciting investors without registering independently as broker-dealers.[3] (*Id.* ¶¶ 69–76, 82–85.) The SEC served Hoplon with the summons and Complaint on May 10, 2018, and it served Vazquez on May 28, 2018. (Dkts. 11, 20.) Neither Defendant has responded to the Complaint or otherwise appeared in this action. (*See generally* docket entries.) As a result, the Clerk of the Court entered default against Hoplon and Vazquez on June 5, 2018, and June 21, 2018, respectively. (Dkts. 19, 22.)

According to the SEC, Vazquez has been criminally indicted for the securities fraud that is the subject of this action. (Dkt. 24-2 [Declaration of Lynn Dean, hereinafter "Dean Decl."] ¶ 6.) Based on that indictment, Vazquez has been in federal custody since July 11, 2018. (*Id.*) The criminal case is pending in this District before Judge James Selna, and the trial in that case is set for September 2018. *See United States v. Daniel B Vazquez, Sr.*, Case No. 18-cr-00077-JVS.

III. ANALYSIS

Federal Rule of Civil Procedure 55(b)(2) and this Court's Local Rule 55-1 "require that applications for default judgment set forth the following information: (1) when and against which party default was entered; (2) the identification of the pleadings to which default was entered; (3) whether the defaulting party is an infant or incompetent person, and if so, whether the person is adequately represented; (4) that the Soldiers' and Sailors' Civil Relief Act of 1940 does not apply; and (5) that notice of the application has been

[3] The SEC also brought a claim, but only against Fluetsch, for aiding and abetting fraud in connection with the purchase or sale of securities in violation of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

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1 served on the defaulting party, if required." *Philip Morris USA Mc. v. Castworld*
2 *Products, Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003). Here, the SEC has set forth the
3 required information in its motion, which indicates that (1) default was entered against
4 Hoplon and Vazquez on June 5, 2018, and June 21, 2018, respectively; (2) the default
5 was entered as to the Complaint; (3) Defendants are not minors nor incompetent persons;
6 (4) the Soldiers' and Sailors' Relief Act of 1940 does not apply; and (5) notice of
7 Plaintiff's motion has been served on Defendants. (Mot. at 6; Dean Decl. ¶¶ 2–3.) The
8 procedural requirements for the entry of default judgment are satisfied.
9
10 **A. Merits of the Motion for Default Judgment**
11
12 After entry of default, a court may grant a default judgment on the merits of the
13 case. Fed. R. Civ. P. 55(a)-(b). "The district court's decision whether to enter a default
14 judgment is a discretionary one." *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).
15 A court may consider the following factors in exercising such discretion:
16
17 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
18 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material
19 facts, (6) whether the default was due to excusable neglect, and (7) the
20 strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.
21
22 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Because default has been
23 entered in this case, the Court must construe as true all of "the factual allegations of the
24 complaint, except those relating to the amount of damages." *TeleVideo Sys., Inc. v.*
25 *Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). Here, the *Eitel* factors support the
26 entry of a default judgment against Defendants.
27
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1. Possibility of Prejudice to the SEC

If default judgment is not entered in this action, the SEC, and the public it is charged with representing, "would be denied the right to judicial resolution of the claims presented" against Defendants in this case. *Elektra Entertainment Group, Inc. v. Crawford*, 226 F.R.D. 388, 392 (C.D. Cal. 2005). Defendants, by choosing to default rather than appear and defend, are "deemed to have admitted the truth of [the SEC's] averments," *Philip Morris USA*, 219 F.R.D. at 499, thereby establishing their liability for the claims. Absent the entry of default judgment against Defendants, the SEC would have no other recourse for relief.

2 & 3. The Merits of the Claim and the Sufficiency of the Complaint

The second and third *Eitel* factors, taken together, "require that a plaintiff state a claim on which the [plaintiff] may recover." *Phillip Morris USA*, 219 F.R.D. at 499 (quotation and citation omitted).

Here, the SEC brings claims under the anti-fraud provisions of the federal securities laws, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5. Section 17(a) prohibits fraudulent conduct in the offer or sale of securities. 15 U.S.C. § 77q(a). Section 10(b) and Rule 10b-5 "make[] it unlawful for any person to employ 'any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe.'" *S.E.C. v. Platforms Wireless Int'l. Corp.*, 617 F.3d 1072, 1092 (9th Cir. 2010). To state a claim for violations of these provisions, the SEC must show that Defendants: (1) made material misrepresentations or omissions, and (2) acted with the requisite mental state. *Vernazza v. S.E.C.*, 327 F.3d 851, 858–60 (9th Cir.), *amended*, 335 F.3d 1096 (9th Cir. 2003). A showing of scienter satisfies the requisite mental state requirement. *Id*. at 859–60.

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1 The SEC has adequately stated claims for violations of these anti-fraud provisions.
2 The SEC alleges that Defendants made material promises to their investors that their
3 money would be used to purchase and renovate real estate and that Hoplon's
4 compensation would be limited. The SEC further alleges that these promises were false,
5 as Defendants depleted the money for personal expenses and paid Hoplon far in excess of
6 the permitted compensation. The SEC also alleges sufficient facts showing that
7 Defendants acted with the requisite scienter. The SEC claims the fraudulent conduct
8 spanned over four years, and Defendants had complete control over the investors' funds.
9
10 The SEC also brings a claim for violation of Section 15(a) of the Exchange Act for
11 soliciting investors without registering independently as broker-dealers. "Under Section
12 15(a) it is unlawful for a natural person who is not registered as a broker to make use of
13 the mails or any means or instrumentality of interstate commerce, to effect any
14 transactions in, or induce the purchase or sale of any security." *Sec. & Exch. Comm'n v.*
15 *Baccam*, 2017 WL 5952168, at *6 (C.D. Cal. June 14, 2017). The SEC adequately states
16 a claim for a violation of Section 15(a), as it alleges that Vazquez, through Hoplon,
17 solicited investors for NEON securities without registering as a broker-dealer.
18
19 **4. The Sum of Money at Stake**
20
21 The fourth *Eitel* factor requires the Court to "consider the amount of money at
22 stake in relation to the seriousness of [Defendants'] conduct." *PepsiCo, Inc. v. Cal.*
23 *Security Cans,* 238 F. Supp. 2d 1172, 1176 (C.D. Cal. 2002); *see also Eitel,* 782 F.2d at
24 1471–72. The SEC seeks disgorgement of the money that Vazquez and Hoplon
25 misappropriated from the NEON funds. (Mot. at 13.) The SEC alleges that Vazquez
26 misappropriated $494,842 in cash and another $59,000 to pay for renovations to his
27 home. (Compl. ¶¶ 55–60.) The SEC also seeks disgorgement of $252,447 from Hoplon,
28 plus prejudgment interest of $45,069.83, for a total of $297,516.83. (Mot at 13.)

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Although the amount of money the SEC seeks is significant, the Court finds that it is proportionate to the seriousness of the alleged misconduct. The SEC alleges that Defendants raised over $2 million from 27 investors and, because of Defendants' misconduct, all but one of the investors have not received any payments since their investments. Instead, Defendants used the money solely to enrich themselves personally. Considering the egregiousness of these allegations, the relief the SEC seeks is appropriate. *See Baccam*, 2017 WL 5952168, at *7 (disgorgement of over $400,000 is proportional to the harm where the defendant allegedly misappropriated funds from a real estate venture and acted as an unregistered broker).

5 & 6. The Possibility of a Dispute Concerning Material Facts and Whether the Default was Due to Excusable Neglect

The fifth and sixth *Eitel* factors require the Court to determine whether it is likely that there would be a dispute as to material facts and whether Defendants' failure to litigate is due to excusable neglect. There is no indication that Defendants' failure to appear and litigate in this action is due to excusable neglect. Moreover, because Defendants have failed to appear, to oppose the Complaint, or to oppose this motion, there is no dispute of material facts. These factors therefore weigh in favor of default judgment.

7. The Public Policy Favoring Decisions on the Merits

Because public policy dictates that courts prefer to rule on the merits, this factor will always weigh against granting a motion for default judgment. Nonetheless, Defendants' choice not to defend themselves renders a decision on the merits "impractical, if not impossible." *PepsiCo Inc.*, 238 F. Supp. 2d at 1177.

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In sum, the *Eitel* factors weigh in favor of granting default judgment here. The SEC has adequately pled violations of the securities laws against both Defendants. Because Defendants have failed to appear and defend themselves, the SEC's allegations must be taken as true. And without the entry of default judgment, the SEC would be prejudiced as it would have no other recourse to litigate its claims.

B. Appropriateness of Remedy

Once a court concludes that default judgment is appropriate, it must determine what damages or other relief is warranted. The SEC carries the burden of showing it is entitled to the requested relief. *Bd. of Trustees of the Boilermaker Vacation Trust v. Skelly, Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005).

1. Vazquez

As an initial matter, the Court finds it appropriate to defer granting the motion for default judgment as to Vazquez. The SEC seeks a permanent injunction, disgorgement, prejudgment interest, and a civil penalty against Vazquez. However, the SEC claims that it cannot determine the appropriate amounts to recover while Vazquez's criminal case is pending. The SEC contends that the outcome of the criminal case and any criminal penalties that may be imposed will impact the amount the SEC seeks in recovery. The SEC represents that Vazquez is scheduled to go to trial in September 2018, and requests the opportunity to move for a specific amount of damages at that time. Because the outcome of Vazquez's criminal case will likely govern the scope of appropriate remedies in this case, the Court **DENIES WITHOUT PREJUDICE** the SEC's motion as against Vazquez. The SEC may renew its motion after the resolution of the criminal case.

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2. Hoplon

As against Hoplon, the SEC seeks a permanent injunction and disgorgement.

a. Permanent Injunction

The requested permanent injunction enjoins Hoplon from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 15(a) of the Exchange Act. Both the Securities Act and the Exchange Act authorize grants of permanent injunctions. *See* 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d)(1).

"To obtain a permanent injunction, the SEC must prove that there is a reasonable likelihood of future violations of the securities laws." *Baccam*, 2017 WL 5952168, at *9 (citing *S.E.C. v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980)). "The existence of past violations may give rise to an inference that there will be future violations; and the fact that the defendant is currently complying with the securities laws does not preclude an injunction." *Murphy*, 626 F.2d at 655. "In predicting the likelihood of future violations, a court must assess the totality of the circumstances surrounding the defendant and his violations, and it considers 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, because of defendant's professional occupation, that future violations might occur; and the sincerity of his assurances against future violations." *Id.*

The Court finds that a permanent injunction is appropriate under the totality of the circumstances. Hoplon has not appeared in this action, so it has provided no assurance that future violations will not occur. The SEC has alleged that the fraudulent conduct was not isolated or incidental. Rather, it spanned at least four years, and involved

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1 multiple investors and millions of dollars. These facts indicate a high degree of scienter,
2 and demonstrate a reasonable likelihood that Hoplon will continue to violate securities
3 laws absent an injunction.
4
5 **b. Disgorgement**
6
7 The Court has "broad equity powers to order the disgorgement of ill-gotten gains
8 obtained through the violation of the securities laws." *S.E.C. v. Platforms Wireless Int'l*
9 *Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010) (quoting *SEC v. First Pac. Bancorp*, 142 F.3d
10 1186, 1191 (9th Cir. 1998)). "Disgorgement is designed to deprive a wrongdoer of unjust
11 enrichment, and to deter others from violating securities laws by making violations
12 unprofitable." *Id.* "The SEC 'bears the ultimate burden of persuasion that its
13 disgorgement figure reasonably approximates the amount of unjust enrichment.'" *Id.*
14 (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989)). The
15 Exchange Act imposes a five-year statute of limitations to disgorgement actions. *Kokesh*
16 *v. S.E.C.*, 137 S. Ct. 1635, 1644 (2017). Because this action was filed in January 2018,
17 the SEC can only seek recovery of funds received by Hoplon since January 2013. (Mot.
18 at 18.)
19
20 The SEC requests disgorgement from Hoplon of $252,447, plus prejudgment
21 interest of $45,069.83, for a total of $297,516.83. (Mot. at 18.) To support this amount,
22 the SEC submitted a declaration from Christopher Conte, an accountant who works for
23 the SEC. (Dkt. 24-3 [Declaration of Christopher Conte] ¶ 1.) Mr. Conte analyzed bank
24 records for Vazquez, Hoplon, Hoplon's chief operating officer Gilbert Fluetsch, and
25 NEON, from January 2013 to January 2018. In that time period, the amount transferred
26 to Hoplon for expenses that do not appear related to any legitimate business purpose is
27 $252,447. (*Id.* ¶ 3, Ex. 2.) To determine the prejudgment interest, the SEC applied the
28 rate provided in 26 U.S.C. § 6621 for tax underpayment, and calculated an interest

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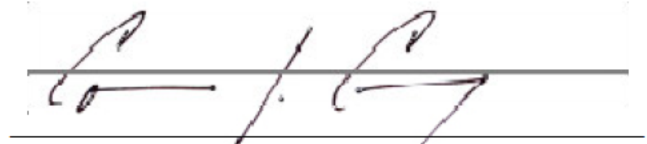
amount of $45,069.83. (Dean Decl. 4–5.) The Ninth Circuit has found that using the tax underpayment rate is an appropriate method to calculate prejudgment interest in disgorgement proceedings for securities violations. *Platforms Wireless Int'l Corp.*, 617 F.3d at 1099. The Court therefore finds that the disgorgement figure is a reasonable approximation of Hoplon's unjust enrichment.

IV. CONCLUSION

For the foregoing reasons, the SEC's motion for default judgment against Hoplon is **GRANTED** and against Vazquez is **DENIED WITHOUT PREJUDICE**. The Court will issue the judgment against Hoplon forthwith.

DATED: August 7, 2018



CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

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EXHIBIT 3

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JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

DANIEL B. VAZQUEZ, SR., GILBERT FLUETSCH, AND HOPLON FINANCIAL GROUP,

Defendant.

Case No. 8:18−cv−0047 CJC (KESx)

FINAL JUDGMENT AS TO DANIEL B. VAZQUEZ, SR.

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JUDGMENT AS TO DEFENDANT DANIEL B. VAZQUEZ, SR.

This cause came before the Court upon Plaintiff Securities and Exchange Commission's ("SEC") Motion for Entry of Default Judgment ("Motion") against Defendant Daniel B. Vazquez, Sr. ("Vazquez"). Having considered the SEC's Complaint, the Motion, the supporting Memorandum of Points and Authorities, the supporting declarations and exhibits, and the other evidence and argument presented to the Court, the SEC's Motion is GRANTED.

I.

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

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

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

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

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

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II.

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

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

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

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

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

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Vazquez is permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security without being registered with the Commission or being associated with a registered broker or dealer that is not a natural person.

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

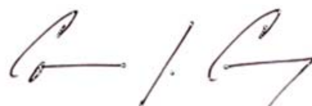
IV.

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

V.

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

Dated: December 11, 2019



THE HON. CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

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