UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95649 / August 31, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21021

In the Matter of

MICAH J. ELDRED,

Respondent.

RESPONDENT'S RESPONSE IN OPPOSITION TO SUMMARY DISPOSITION AND IMPOSITION OF PENALTIES

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Micah J. Eldred ("Respondent" or "Mr. Eldred"), through undersigned counsel, hereby files this Response in Opposition to the Division of Enforcement's Motion for Summary Disposition and Imposition of Penalties. The Commission should not impose any additional penalty against Mr. Eldred. After defending himself at trial in the underlying enforcement action, Mr. Eldred prevailed on the overwhelming majority of counts brought against him. And even now the sole count sustained against him is under review by the U.S. Court of Appeals for the Eleventh Circuit. Yet the Division has asked for additional penalties premised on facts rejected by the jury, and, at minimum, under review by the Court of Appeals. Rather than risk a conflict with the court, the Commission should not impose any further penalty. Alternatively, for the reasons relied on by the district court, any further sanction should be temporally limited to no more than five years, retroactive to the district court's entry of penalties.

RELEVANT FACTS AND PROCEDURAL HISTORY

On February 20, 2019, the Division of Enforcement filed a complaint in the U.S. District Court for the Middle District of Florida against five defendants—Spartan Securities Group Ltd., Island Capital Management, LLC, Carl E. Dilley, Micah J. Eldred and David D. Lopez. The complaint alleged 14 counts against the defendants, with, as relevant here, Count VI alleging a violation of Rule 10b-5(b). The allegations centered on conduct that had allegedly occurred primarily in 2011 and 2012, and, at the latest, occurred in early 2014.

The case went to a jury trial in July 2021. The jury returned a verdict against the Division on all counts except for Count VI, and Mr. Lopez was dismissed from the case. *See SEC v. Spartan Securities Group, Ltd., et al.*, 8:19-cv-00448, ECF No. 256 (M.D. Fla. Aug. 9, 2021).

After additional litigation, on August 10, 2022, the district court entered final penalty awards against the remaining four defendants. For Mr. Dilley and Mr. Eldred, individually, the Court imposed a five-year injunction against violating Rule 10b-5(b), a time-limited penny stock bar and

a civil penalty of $150,000.

On August 31, 2022, the Division instituted administrative proceedings against both Mr. Dilley and Mr. Eldred. The order set the matter for a hearing to determine: "What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) [15 U.S.C. § 78o] and 17A [15 U.S.C. § 78q-1] of the Exchange Act."

Meanwhile, Mr. Dilley and Mr. Eldred appealed the district court's judgment. *See SEC v. Spartan Securities Group, Ltd., et al.,* No. 22-13129. Both have argued that the sole count against them is premised on legally insufficient evidence. In other words, if Mr. Eldred succeeds in his appeal, it would result in the preclusion of this follow-on proceeding entirely.

On March 13, 2023, the Division moved for summary disposition and requested the Commission impose "an industry bar against him." Div. Mot. at 1.

ARGUMENT

The Commission should decline the Division's invitation to impose additional sanctions against Mr. Eldred. First, the Division's reliance on facts rejected by the jury and legal conclusions under review by the Court of Appeals requests a judgment that threatens to conflict with conclusive judgments. Second, even if additional penalties were appropriate, they should be term-limited for the reasons set out by the district court.

I. The Commission May Not Rely on Factual Assertions Rejected by the Jury and Must Not Issue a Sanction for Conduct That Does Not Constitute a Violation of Rule 10b-5

At present, this proceeding threatens to cross constitutional limits on the Commission's authority, as the Division of Enforcement has invited it to impose additional penalties for alleged violations that may be conclusively *rejected* by a court of competent jurisdiction, premised on facts that were *rejected* by a jury. If the Commission accepted that invitation, its judgment would be unlawful. Instead, the Commission should hold this matter in abeyance pending resolution of Mr.

Eldred's appeal, and, in any event, may not issue a premised on facts rejected by the jury.

Res judicata applies to this proceeding, and thus the factual and legal determinations resolved in Mr. Eldred's favor by the district court cannot be revisited here. *See Siris v. SEC*, 773 F.3d 89, 91–92 (D.C. Cir. 2014) (follow-on proceedings may not "relitigate the factual issues 'conclusively decided' in the underlying civil suit"); *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1111 (D.C. Cir. 1988) (*res judicata* applies to follow-on proceedings concerning issues decided by the district court, but does not bar introduction of relevant mitigation evidence). This implicates two important limits on the Commission's ultimate resolution of this proceeding. First, because Mr. Eldred was exonerated by a jury of 13 of the 14 counts filed against him, the Division cannot now rely on the facts underlying the 13 counts resolved in his favor. Second, because Mr. Eldred has also appealed the district court's judgment against him to the Eleventh Circuit Court of Appeals, where he has challenged the legal sufficiency of the verdict against him, this proceeding cannot reach a different legal conclusion than the Court of Appeals.

Remarkably, the Division of Enforcement relies almost entirely on the allegations made in its district court complaint, even though the vast majority of those counts were *rejected* by the jury. The Division claims now that Mr. Eldred "played a key role in the fraudulent manufacture of public companies for sale fundamentally premised on a deceptive public float of purportedly 'free-trading' securities." Div. Mot. at 4. It also says he "made misrepresentations and omissions to FINRA when submitting Form 211 applications for issuers seeking to initiate or resume quotations of the issuer's security," "related to, among other things, the identity of consultants or persons in control of the issuers; the issuer's plans for potential mergers or acquisitions; and, the identity of the person or entity for whom a security's quotation was being submitted." *Id.* Finally, the Division claims Mr. Eldred "initiated and provided false information for applications filed with the DTC or its

participants when seeking DTC eligibility for issuers, including making misrepresentations and omissions related to whether issuers were shell or blank check companies." *Id*.

But those claims were largely resolved *against* the Division. After a 12-day trial the jury returned a verdict in Mr. Eldred's favor on 13 of 14 counts, and a verdict for SEC on a single count. That count alleged that Mr. Eldred made materially misleading statements or omissions in connection with purchases of certain issuers' securities in violation of Rule 10b-5. **Attachment 1.** As to this count, the jury instructions outlined 19 types of misrepresentations or omissions that Appellants allegedly made. **Attachment 2 at 38-39.**

The claim that Mr. Eldred "played a key role in the fraudulent manufacture of public companies for sale fundamentally premised on a deceptive public float of purportedly 'free-trading' securities," was not part of the relevant jury instruction. *See id.* And, in fact, the jury rejected this theory of liability entirely. Indeed, the assertion that Mr. Eldred misrepresented the status of certain shares by saying they were free-trading, was foreclosed by the jury's rejection of Count XIV. *See id.* at 43. That count had alleged that the shares should have been registered, and thus were improperly issued without restrictive ledgers. *Id*. Of course, the jury rejected that argument, meaning that it conclusively decided the shares *were free-trading*. *See id.*

This leaves only the allegations that Mr. Eldred omitted certain information from Form 211 applications or he contributed to false DTC applications by allegedly misrepresenting the shell status of the issuers. But, as he has argued in his appeal, Mr. Eldred's actions could not have violated Rule 10b-5 as a matter of law, because he had no duty to disclose omitted information, and he neither made any misrepresentations nor disseminated them to the public. **Attachment 3 at 22-24.** For the Form 211 applications, Mr. Eldred had no duty to disclose additional information to FINRA, and he certainly did not provide any materially misleading information in those forms. *See id.* Moreover,

they were sent only to FINRA, not the investing public at large, and thus weren't actionable. *Id.* And the statements to the DTC concerned the status of the relevant issuers as being shell companies, but the trial evidence revealed that the statements were accurate. *Id.* at 23. Moreover, none of these statements were made to the investing public, so they could not have been materially misleading to the average investor. *Id*.

In the end, this means that the factual allegations made by the Division cannot form the basis of additional penalties in this proceeding. They were either rejected by the jury or were not actionable as a matter of law. On the latter point, if the Commission intends to impose a sanction related to the allegations concerning the DTC applications, it should wait until Mr. Eldred's appeal is fully resolved. Otherwise, it risks imposing a sanction without a lawful basis.

II. Any Penalty Should Be Time-Limited

If the Commission nevertheless proceeds to consider the Division's request for an indefinite industry bar, it should carefully limit any additional sanction against Mr. Eldred. To be sure, the district court imposed a time-limited injunction, penny stock bar and civil penalty against Mr. Eldred. As was established after an evidentiary hearing held by the district court, the "drastic remedy" of a "permanent" injunction or industry bar against Mr. Eldred was unnecessary. **Attachment 4** at 12, 18. The alleged "violations occurred many years ago" and Mr. Eldred has "voluntarily withdrawn [his] securities licenses," and is "advancing in age, being 54 … years old" in 2022. *Id*. at 12. Thus, the district court concluded that "a temporally limited bar [wa]s sufficient." *Id.* at 18. The Commission should follow the district court's lead, and, should it impose any bar, temporally limit it to no more than five years, effective retroactively to August 10, 2022—the date of the district court's judgment.

CONCLUSION

The Division's motion for penalties should be denied. Alternatively, any industry bar should be term-limited.

April 14, 2023

Respectfully,

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OS Received 04/14/2023

Certificate of Service

In accordance with Rules of Practice 150 and 151, 17 C.F.R. §§ 201.150 & .151, I certify that a copy of this document was filed on this date via the Commission's Electronic Filings in Administrative Proceedings (eFAP) system. I also sent a copy of this document by email on this date to counsel for the Division of Enforcement as follows:

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April 14, 2023

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ATTACHMENT 1

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

CASE NO. _____

SECURITIES AND EXCHANGE COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
SPARTAN SECURITIES GROUP, LTD.,	)
ISLAND CAPITAL MANAGEMENT LLC,	)
CARL E. DILLEY,	)
MICAH J. ELDRED, and	)
DAVID D. LOPEZ,	)
	)
Defendants.	)
_____	)

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission ("Plaintiff" or the "Commission") alleges:

I. INTRODUCTION

1. The Commission brings this action to enjoin Defendants Spartan Securities Group, Ltd. ("Spartan Securities"), Island Capital Management LLC, d/b/a Island Stock Transfer ("Island Stock Transfer"), Carl E. Dilley ("Dilley"), Micah J. Eldred ("Eldred"), and David D. Lopez ("Lopez") (collectively, "Defendants") from violating the provisions of the federal securities laws described herein.

2. Spartan Securities, a registered broker-dealer, and Island Stock Transfer, a registered transfer agent, are commonly owned and tout their "one-stop shop" services provided

in tandem to issuers of microcap securities. At material times to this Complaint, Dilley, Eldred, and Lopez were common owners of the parent of both Spartan Securities and Island Stock Transfer, and principals of both Spartan Securities and Island Stock Transfer.

3. This action involves Defendants' roles in one or two separate fraudulent schemes from approximately December 2009 through August 2014 to manufacture at least 19 public companies for sale fundamentally premised on a deceptive public float of purportedly "free-trading" securities: 14 by Alvin Mirman and Sheldon Rose (the "Mirman/Rose Companies," identified in paragraph 30 below) and five by Michael Daniels, Andy Fan, and Diane Harrison (the "Daniels Companies," identified in paragraph 102 below).

4. The fraudulent schemes depended on misrepresentations and omissions to, among others, the Commission, the Financial Industry Regulatory Authority ("FINRA"), and the Depository Trust Company ("DTC") that the Mirman/Rose and Daniels Companies were legitimate small businesses with independent management and shareholders. In reality, both the management and shareholders were nothing more than nominees for control persons who always intended merely to sell all the securities of the companies privately in bulk for their own benefit. The essential value of these securities (each bulk sale realized proceeds of hundreds of thousands of dollars) was their false designation as "free-trading" with the ability to be sold immediately on the public market. If the truth had been known to the public, the securities would have been restricted from such sales and would have had little value.

5. Dilley and Eldred knew or were reckless in not knowing from the onset that the Mirman/Rose Companies and Daniels Companies, respectively, were pursuing their stated plans under false pretenses and instead being packaged for sale as public vehicles, and that the

shareholders were mere nominees for the control persons. Nonetheless, Defendants took critical steps to advance the frauds.

6. Dilley schemed with Mirman and Rose, and Eldred schemed with Daniels, Fan and Harrison, to defraud the public that the Mirman/Rose Companies and Daniels Companies were operating businesses with independent management and shareholders, rather than undisclosed "blank check" companies (sometimes referred to as "shells" or "vehicles") for sale. In furtherance of the Mirman/Rose scheme, Dilley signed false Form 211 applications submitted to FINRA, contributed to false DTC applications, found potential shell buyers, signed an escrow agreement and false attestation letters for shell buyers, and effectuated the bulk transfer of the entire deceptive public float of Mirman/Rose Companies to shell buyers. Eldred similarly schemed with Daniels, Fan and Harrison by filing false Forms 211 with FINRA, signing false securities deposit forms and executing trades in Spartan Securities' proprietary account, all in support of the manufacture of undisclosed public vehicles – one of which Eldred expressly proposed to acquire himself while its Form 211 was pending.

7. A necessary step in both fraudulent schemes was for the issuer's stock to be eligible for public quotation, which requires a broker-dealer to file a Form 211 application with FINRA to demonstrate compliance with Rule 15c2-11 under the Securities Exchange Act of 1934 ("Exchange Act"). FINRA typically raises specific concerns or seeks further information from the broker-dealer in one or more deficiency letters before clearing the application. Meanwhile, transfer agents perform a number of roles for issuers pertaining to their securities and shareholders, including recording changes of ownership, maintaining the issuer's security

holder records, canceling and issuing certificates, and resolving problems arising from lost, destroyed or stolen certificates.

8. Spartan Securities and Island Stock Transfer acted in tandem to provide these various services which were critical to the Mirman/Rose and Daniels/Fan/Harrison shell factories. For example, Spartan Securities filed the Form 211 application with FINRA in order for the securities of these 19 issuers to be publicly quoted. Spartan Securities, Dilley, and Eldred made materially false statements and omissions to FINRA regarding the purpose, management and shareholders of the Mirman/Rose Companies and Daniels Companies. Spartan Securities and its principals also had information that undermined any reasonable basis that the information required by Rule 15c2-11 was materially accurate and from a reliable source. Spartan Securities then initiated unpriced quotations for all the Mirman/Rose Companies and Daniels Companies (except PurpleReal) upon FINRA's clearance of the Form 211.

9. Lopez was a Spartan Securities principal who, with Dilley and Eldred's knowledge, personally undertook responsibility for much of the Form 211 process on at least four Mirman/Rose Companies. In addition, Lopez was Spartan Securities' Chief Compliance Officer and the principal responsible for effectuating its extensive written policies and procedures applicable to Form 211 applications. Nonetheless, Lopez knowingly or recklessly ignored those procedures and the other requirements inherent in Rule 15c2-11, including failing to conduct any investigation or inquiry into red flags raised by FINRA in the deficiency letters and other adverse information in Spartan Securities' possession, or even to familiarize himself with the issuers. As a result, Lopez was a substantial factor in Spartan Securities'

failure to have a reasonable basis for believing that required information about those four Mirman/Rose Companies was accurate and from a reliable source.

10. After obtaining Form 211 clearance for the Mirman/Rose Companies, Spartan Securities and Island Stock Transfer then initiated and provided false information for applications filed with DTC through which the securities became eligible for electronic clearance. Island Stock Transfer also effectuated both the bulk issuance and transfer of the Mirman/Rose Company securities without restriction despite Dilley's knowing (or recklessly not knowing) and numerous red flags that the securities were in the hands of affiliates and therefore restricted, while Spartan Securities effectuated the unlawful deposit and open-market sales of some Daniels Company shares by signing false deposit requests and entering pre-arranged trades through a proprietary account.

11. As a result of the conduct alleged in this Complaint:

(a) Defendant Spartan Securities violated Sections 5(a), 5(c), 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), 77q(a)(1), 77q(a)(3), and Sections 10(b) and 15(c)(2) and Rules 10b-5 and 15c2-11 of the Exchange Act, 15 U.S.C. §§ 78j(b), 78o(c)(2) and 17 C.F.R. §§ 240.10b-5, 240.15c2-11; and aided and abetted violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77e(a), and Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5;

(b) Defendant Island Stock Transfer violated Sections 5(a), 5(c), 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), 77q(a)(1), 77q(a)(3), and Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R.

§ 240.10b-5; and aided and abetted violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77e(a), and Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5;

(c) Defendant Dilley violated Sections 5(a), 5(c), 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), 77q(a)(1), 77q(a)(3), and Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b), and 17 C.F.R. § 240.10b-5; and aided and abetted violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77e(a), and Sections 10(b) and 15(c)(2) and Rules 10b-5 and 15c2-11 of the Exchange Act, 15 U.S.C. §§ 78j(b), 78o(c)(2), and 17 C.F.R. §§ 240.10b-5, 240.15c2-11;

(d) Defendant Eldred violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1), 77q(a)(3), and Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b), and 17 C.F.R. § 240.10b-5; and aided and abetted violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77e(a), and Sections 10(b) and 15(c)(2) and Rules 10b-5 and 15c2-11 of the Exchange Act, 15 U.S.C. §§ 78j(b), 78o(c)(2), and 17 C.F.R. §§ 240.10b-5, 240.15c2-11;

(e) Defendant Lopez aided and abetted violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act, 15 U.S.C. § 78o(c)(2) and 17 C.F.R. § 240.15c2-11; and

(f) Unless enjoined, Defendants are reasonably likely to continue to violate the federal securities laws.

12. The Commission therefore respectfully requests the Court enter an order: (i) permanently enjoining Defendants from violating the federal securities laws; (ii) directing Island Stock Transfer to pay disgorgement with prejudgment interest; (iii) directing Defendants

to pay civil money penalties; and (iv) imposing penny stock bars against Spartan Securities, Dilley, Eldred and Lopez.

II. DEFENDANTS AND OTHER RELEVANT PERSONS

A. DEFENDANTS

13. **Spartan Securities** has been registered with the Commission as a broker-dealer since 2001, with its principal place of business in Clearwater, Florida. Spartan Securities is a Florida limited partnership wholly owned by Connect X Capital Markets LLC ("Connect X"), whose managing member is Eldred and shareholders have included Dilley, Eldred and Lopez. Between 2009 and 2018, Spartan Securities has been the subject of at least 10 disciplinary actions by FINRA or the NASDAQ Stock Market.

14. **Island Stock Transfer** has been registered with the Commission as a transfer agent since 2003, with its principal place of business in Clearwater, Florida. Island Stock Transfer is a Florida limited liability company wholly owned by Connect X that shares office space, computer systems, officers and employees with Spartan Securities.

15. **Dilley**, a resident of Seminole, Florida, was a registered principal and representative of Spartan Securities from 2004 to 2015. Dilley was also the President of Island Stock Transfer from 2004 until January 2018. Dilley is presently the Vice President of another registered transfer agent owned by Connect X and of which Eldred and Lopez are also officers.

16. **Eldred**, a resident of Seminole, Florida, has been a registered principal and representative of Spartan Securities and the Chief Executive Officer of Island Stock Transfer from 2001 to the present.

17. **Lopez**, a resident of St. Petersburg, Florida, has been a registered principal and Chief Compliance Officer of Spartan Securities from March 2001 to the present and the Chief Compliance Officer of Island Stock Transfer from August 2006 to the present.

B. OTHER RELEVANT PERSONS

18. **Alvin Mirman**, of Sarasota, Florida, was the undisclosed control person of Changing Technologies, Inc. ("Changing Technologies") and an undisclosed control person, along with Rose, of On the Move Systems Corp. ("On the Move"), Rainbow Coral Corp. ("Rainbow Coral"), First Titan Corp. ("First Titan"), Neutra Corp. ("Neutra"), Aristocrat Group Corp. ("Aristocrat"), First Social Networx Corp. ("First Social"), Global Group Enterprises Corp. ("Global Group"), E-Waste Corp. ("E-Waste") and First Independence Corp. ("First Independence"). Mirman was a defendant in SEC v. McKelvey et al., Case No. 15-cv-80496 (S.D. Fla. 2015), in which the Court entered, by consent, a judgment of permanent injunction, officer and director bar and penny stock bar against Mirman. On August 19, 2016, Mirman pled guilty to a one-count Information charging him with conspiracy to commit securities fraud. U.S. v. Mirman et al., Case No. 16-cr-20572 (S.D. Fla.). Both the Commission and criminal actions included his misconduct in connection with the Mirman/Rose Companies. In 2007, without admitting or denying wrongdoing, Mirman consented to being barred by FINRA from association with any FINRA member.

19. **Sheldon Rose**, of Sarasota, Florida, was the undisclosed control person of Kids Germ Defense Corp. ("Kids Germ"), Obscene Jeans Corp. ("Obscene Jeans"), Envoy Group Corp. ("Envoy") and First Xeris Corp. ("First Xeris") and an undisclosed control person, along with Mirman, of On the Move, Rainbow Coral, First Titan, Neutra, Aristocrat, First Social,

Global Group, E-Waste and First Independence. The Commission entered, by consent, a cease-and-desist order, officer and director bar and penny stock bar against Rose. In re Sheldon Rose et al., Exch. Act Rel. No. 78894 (Sept. 21, 2016). The Commission later ordered Rose to pay disgorgement and prejudgment interest in the amount of $2,973,916.18. In re Sheldon Rose, Exch. Act Rel. No. 80301 (Mar. 23, 2017). On November 9, 2016, Rose pled guilty to a one-count Information charging him with conspiracy to commit securities fraud. U.S. v. Kass et al., Case No. 16-cr-20706 (S.D. Fla.). Both the Commission and criminal actions included his misconduct in connection with the Mirman/Rose Companies.

20. **Michael Daniels**, of Palmetto, Florida, was the undisclosed control person of Dinello Restaurant Ventures, Inc., n/k/a AF Ocean Investment Management Co. ("Dinello/AF Ocean"), President, Chief Executive Officer, Chief Financial Officer, Treasurer and Chairman of the Board of Court Document Services, Inc., n/k/a ChinAmerica Andy Movie Entertainment Media Co. ("Court/ChinAmerica"), Principal Executive Officer, Secretary, Treasurer, Chairman of the Board and Chief Financial Officer of Quality Wallbeds, Inc., n/k/a Sichuan Leaders Petrochemical Co. ("Wallbeds/Sichuan"), Secretary, Chief Financial Officer, Treasurer, Director, and Chairman of the Board of Top to Bottom Pressure Washing, Inc., n/k/a Ibex Advanced Mortgage Technology Co. ("TTB/Ibex"), and undisclosed control person of PurpleReal.com Corp. ("PurpleReal"). On April 25, 2018, the Commission filed a Complaint against Daniels related to his conduct in connection with the Daniels Companies. SEC v. Harrison, et al., No. 8:18-cv-01003 (M.D. Fla.).

21. **Diane Harrison**, of Palmetto, Florida, was the Chief Financial Officer, Secretary, Treasurer and Director of Dinello/AF Ocean, Treasurer, Principal Accounting

Officer and Director of Wallbeds/Sichuan, Director and Secretary of TTB/Ibex, and President, Director, and Chairman of the Board of PurpleReal. Harrison, an attorney, is the owner of the law firm Harrison Law, PA, which is based in Florida. Harrison, who is Daniels' wife, is a defendant in the SEC v. Harrison case based on her conduct with respect to the Mirman/Rose Companies and the Daniels Companies.

22. **Andy Fan**, of Las Vegas, Nevada, was the President, Treasurer, Chief Executive Officer, Chief Financial Officer and Director of Dinello/AF Ocean and Court/ChinAmerica, and was the President and Director of Wallbeds/Sichuan and TTB/Ibex. The Commission entered, by consent, a cease-and-desist order, officer and director bar and penny stock bar against Fan, and ordered him to pay a civil money penalty of $140,000. In re Andy Z. Fan, Securities Act Rel. No. 10487 (Apr. 25, 2018). The Commission's action related to Fan's conduct with respect to certain of the Daniels Companies.

III. JURISDICTION AND VENUE

23. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d)(1) and 77v(a); and Sections 21(d), 21(e) and 27(a) of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa(a).

24. The Court has personal jurisdiction over Defendants and venue is proper in this District because, among other things, some or all of the Defendants reside or transact business in this District and/or participated in the offer, purchase, or sale of securities in this District, and many of the acts and transactions constituting the violations alleged in this Complaint occurred in this District. In addition, venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the Commission's claims occurred here.

25. In connection with the conduct alleged in this Complaint, Defendants, directly and indirectly, singly or in concert with others, have made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, and of the mails.

IV. FACTUAL ALLEGATIONS

A. The Mirman/Rose Shell Factory

26. Mirman and Rose, alone or together, manufactured at least 14 undisclosed "blank check" companies in assembly-line fashion in order to sell in bulk the entire deceptive float of purportedly unrestricted securities.

27. Mirman and Rose manufactured each Mirman/Rose Company in a similar fashion. Mirman and Rose recruited a sole officer, director, employee, and majority shareholder (the "sole officer") to act in name only. Mirman and Rose prepared and filed false and misleading registration statements with the Commission (the "Forms S-1") misrepresenting that the sole officer was pursuing a specific business plan (versus Mirman and Rose controlling mere shells to sell all the securities in bulk) and would be solely responsible to solicit investors for the company (versus Mirman and Rose using similar rosters of friends and family to "invest" in name only).

28. After the Form S-1 became effective, Mirman and Rose solicited the same or virtually the same number of friends and family as shareholders while maintaining complete control through stock certificates with blank stock powers, which are signed by the named shareholder and entitle whoever holds the stock certificate to sell or transfer it.

29. Mirman and Rose directed Spartan Securities and Island Stock Transfer to prepare applications with FINRA and DTC that contained materially false and inaccurate information in order to make the Mirman/Rose Companies marketable as public vehicles. Specifically, Mirman and Rose needed the purportedly public float of securities available for immediate public quotation and sale through DTC electronic clearance. Mirman and Rose then effectuated the bulk sale of the shares of the issuer for a single cash price by delivering all the stock certificates with blank stock powers to a single buyer group. Mirman and Rose split the net proceeds after paying a nominal amount to their straw sole officer and shareholders.

30. Mirman and Rose, alone or together, created and developed the following Mirman/Rose Companies:

Mirman/Rose Company	**Control Person(s)**	**Effective Date of Form S-1**	**Date of Change of Control**	**Time Between Form S-1 and Change of Control**
Kids Germ	Rose	12/2009	2/2010	3 months
Obscene Jeans	Rose	8/2010	12/2010	4 months
On the Move	Mirman/Rose	12/2010	6/2011	6 months
Rainbow Coral	Mirman/Rose	1/2011	10/2011	9 months
First Titan	Mirman/Rose	2/2011	9/2011	7 months
Neutra	Mirman/Rose	4/2011	11/2011	7 months
Aristocrat	Mirman/Rose	11/2011	7/2012	8 months
First Social	Mirman/Rose	3/2012	2/2013	11 months
Global Group	Mirman/Rose	3/2012	4/2013	13 months
E-Waste Corp.	Mirman/Rose	6/2012	4/2013	10 months

Mirman/Rose Company	Control Person(s)	Effective Date of Form S-1	Date of Change of Control	Time Between Form S-1 and Change of Control
First Independence	Mirman/Rose	8/2012	5/2013	9 months
Envoy Group	Rose	9/2013	4/2014	7 months
Changing Technologies	Mirman	10/2013	6/2014	8 months
First Xeris	Rose	1/2014	N/A	N/A

31. Mirman and Rose never intended to take any step to advance the purported business plan stated in the Form S-1. Rather, as evidenced in part by the short amount of time between Form S-1 effectiveness and the change of control, Mirman and Rose solely sought to manufacture a public vehicle in assembly-line fashion, and sell all its securities in bulk once obtaining the necessary clearances from the Commission, FINRA, and DTC.

32. Mirman and Rose retained Spartan Securities and Island Stock Transfer for a number of critical steps to develop the Mirman/Rose Companies in quick succession from Form S-1 effectiveness to public vehicles with securities eligible for public quotation and electronic clearance.

33. Mirman and Rose routinely contacted Dilley to simultaneously start broker services through Spartan Securities and transfer agent services through Island Stock Transfer. Mirman or Rose emailed Dilley stating that the issuer's Form S-1 recently had gone effective and "[w]e want to start a 15c211" and have Island Stock Transfer act as transfer agent. Dilley instructed Spartan Securities and Island Stock Transfer employees to send the materials for, respectively, the Form 211 application and transfer agent services to Mirman or Rose.

34. Spartan Securities and Island Stock Transfer, which share office space, computer systems, officers and employees, acted in tandem for the Mirman/Rose Companies. For example, Island Stock Transfer prepared certified shareholder lists at the request and upon the approval of Mirman and Rose. Spartan Securities then submitted those shareholder lists to FINRA as part of the Form 211 applications.

35. Spartan Securities and Island Stock Transfer's actions allowed Mirman and Rose to sell the Mirman/Rose Companies via the bulk sale of all the issued securities to a small buyer group generating combined proceeds totaling at least $3.7 million:

Mirman/Rose Company	Spartan Securities Form 211 Signatory	Island Stock Transfer Original Issuance	FINRA Form 211 Clearance	DTC Filing	Island Stock Transfer Bulk Transfer To Buyer Group
Kids Germ	Dilley	12/2009	1/2010	1/2010	2/2010
Obscene Jeans	Dilley	8/2010	9/2010	10/2010	12/2010
On The Move	Dilley	1/2011	2/2011	4/2011	6/2011
Rainbow Coral	Dilley	2/2011	3/2011	7/2011	10/2011
First Titan	Dilley	4/2011	5/2011	7/2011	9/2011
Neutra	Dilley	6/2011	7/2011	8/2011	11/2011
Aristocrat Group	Dilley	12/2011	12/2011	2/2012	7/2012
First Social Networx	Dilley	3/2012	4/2012	7/2012	2/2013
Global Group	Dilley	4/2012	5/2012	8/2012	4/2013
E-Waste	Dilley	7/2012	8/2012	9/2012	4/2013
First Independence	Dilley	2/2013	3/2013	4/2013	5/2013
Envoy Group	Dilley	N/A	12/2013	N/A	N/A
Changing Technologies	Dilley	11/2013	1/2014	4/2014	6/2014
First Xeris	Dilley	1/2014	3/2014	4/2014	N/A (SEC stop order)

Dilley's Knowledge of/Participation in the Mirman/Rose Fraud

36. Dilley, a registered principal of Spartan Securities and Island Stock Transfer, knew or was reckless in not knowing that Mirman and Rose were manufacturing the Mirman/Rose Companies to control and sell a deceptive float of purportedly unrestricted securities (versus the material misrepresentations in the Forms 211 and Commission filings that the issuers were legitimate startups controlled by the nominee sole officer with an independent shareholder base).

37. Dilley knew or was reckless in not knowing of Mirman and Rose's undisclosed control of and intent for the Mirman/Rose Companies with the earliest issuer, Kids Germ. Rose solicited Dilley to have Spartan Securities file the Kids Germ Form 211. On January 4, 2010 – the same day FINRA cleared the Form 211 – Rose emailed Dilley: "What do you recommend [Kids Germ] do with the DTC, know[ing] the route it is taking? Do you want to speak to the attorney interested in the company, or do you want me to call him? If you want me to call him, please forward telephone number." By email that same day, Dilley responded: "We should apply for DTC eligibility. Let me call you on this once I talk to [the attorney]."

38. On January 13, 2010, Island Stock Transfer initiated the DTC application for Kids Germ misrepresenting "the company is not a shell" despite Dilley knowing or recklessly not knowing it was a shell because of, among other things, its lack of assets or revenues and knowing "the route it is taking." One month later, Island Stock Transfer transferred the Kids Germ shares from Rose's friends and family in bulk without a restrictive legend stamped on the certificate to indicate that the shares are restricted from transfer or sale. Dilley knew or was reckless in not knowing that these shareholders were affiliates of Kids Germ because of

Rose's control over all their shares to effectuate a bulk sale of Kids Germ and therefore, the shares should have been restricted from transfer or sale.

39. For the second Mirman/Rose Company, Obscene Jeans, Dilley signed the Form 211. On September 3, 2010 (the day FINRA cleared the Form 211), at Rose's request, Dilley contacted a DTC participant firm to file a DTC application for Obscene Jeans. By email dated October 4, 2010, Dilley's assistant forwarded to Rose (copying Dilley) the DTC participant firm's refusal to file the application because it was "looking to sponsor operating companies. We understand that having a shell DTC eligible raises its price but we are just not interested in the risk that the company falls into the wrong people's hands." The following week, despite this admonition, Dilley's assistant asked the firm to reconsider filing the application. The firm agreed, and Spartan Securities re-initiated the DTC application at the behest of Dilley.

40. In the meantime, by email dated October 5, 2010, Rose sent Dilley a term sheet for the sale of Obscene Jeans making no mention of the sole officer or purported business plan and focusing largely on the share structure and tradeability status (for example, the shares were quoted with one market maker, which was Spartan Securities). The term sheet also listed that Obscene Jeans had no liabilities and only $20,000 in assets (all cash).

41. On October 22, 2010, a buyer emailed Dilley (copying Rose) that "we are closing on [Obscene Jeans] – can you post a bid-ask today?" The following day, Dilley emailed Rose: "I have to have someone open an account and deposit shares and offer some for sale. . . . I have never seen this to be a requirement from anyone wanting a shell."

42. On October 25, 2010, Rose emailed Dilley: "I told our mutual friend ???? today to F off, respectfully. Thanks for your effort."

43. These various documents and events involving Dilley in September and October 2010 were clear signs that Obscene Jeans was a blank check company and Rose controlled all shares of Obscene Jeans for sale in bulk.

44. One month later, Rose asked Dilley for Island Stock Transfer to act as escrow agent for the sale of Obscene Jeans. At Rose's request, Dilley signed an escrow agreement on behalf of Island Stock Transfer by which all of the shares of Obscene Jeans (both the control block and all purportedly unrestricted shares in the names of the 24 nominee shareholders) were being sold pursuant to one stock purchase agreement for $440,000. All of these documents and communications received by Dilley were clear signs that Obscene Jeans was a blank check company and Rose controlled all shares of Obscene Jeans for sale in bulk.

45. Dilley communicated exclusively with Mirman and Rose, and was aware that they directed the finances across the Mirman/Rose Companies. For example, by email dated September 19, 2011, Mirman told an Island Stock Transfer employee: "We spoke to Carl [Dilley] and told him we will pay [the Rainbow Coral invoice] through the Neutra account," despite Rainbow Coral and Neutra purportedly being unrelated companies with separate management. Dilley told that same employee (copying Mirman): "We went through what was supposed to happen with this." The following month (and on the same day) Dilley signed the stock certificates by which all the shares of both Rainbow Coral and Neutra were sold to the same buyers represented by the same counsel, demonstrating Dilley knew or was reckless in not knowing that Mirman and Rose controlled all shares of both issuers.

46. Dilley knew or was reckless in not knowing that Mirman and Rose similarly manufactured E-Waste and Global Group for sale. By email dated December 4, 2012, Mirman

wrote Dilley: "We [Mirman and Rose] are in the process of selling E-Waste and the attorney wants," among other things, "[c]onfirmation from the T[ransfer] A[gent] that it has not put restrictions on any free trading shares." Dilley responded "will do," and instructed Island Stock Transfer's Director of Operations to prepare the letter. Dilley signed the requested letter, and was copied on the transmittal of the letter exclusively to Mirman. The Director of Operations soon thereafter signed the stock certificates transferring all of E-Waste's issued shares per the buyer's counsel's instructions.

47. By email dated January 1, 2013, Rose wrote Dilley: "Please send [the] same letter [as E-Waste] but for Global [Group] and e-mail to me ASAP." Dilley signed that requested letter as well at Rose's request.

48. On January 16, 2013, the buyer's counsel for E-Waste sent an instruction letter to Island Stock Transfer enclosing a stock purchase agreement expressly stating that "all of the free trading shares of the Company consisting of an aggregate of 3,000,000 shares" were simultaneously being purchased pursuant to stock purchase agreements "of like tenor" with Rose as "Seller's Representative," evidencing that Rose, from whom Island Stock Transfer had exclusively taken instructions to date, controlled the bulk sale of all the "free-trading" shares.

49. By email dated February 27, 2013, Mirman asked Dilley how to handle a lost certificate of one of the "free-trading" shareholders because "Sheldon [Rose] is in New York today closing Global." Dilley instructed Island Stock Transfer's Director of Operations to respond to Mirman's request. Island Stock Transfer effectuated the bulk transfer of virtually

all shares of Global Group to the same exact small group of buyers as E-Waste represented by the same counsel.

50. Dilley also assisted Rose's efforts to sell the last Mirman/Rose Company, First Xeris. Soon after FINRA's clearance of Spartan Securities' Form 211 for First Xeris in March 2014, a shell finder emailed Dilley: "I understand Sheldon Rose is trying to contact you regarding his new company [First Xeris] being dropped to Pink[] [Sheet] from QB based on the new bid/ask rules. I have a buyer for it, but not as a pink." Dilley then placed daily bids in the open market at Rose's request. Accordingly, Dilley knew or was reckless in not knowing that First Xeris was a company that Rose controlled and was looking to sell.

Spartan Securities' Involvement in the Mirman/Rose Fraud

51. With Dilley's knowing or reckless involvement, Spartan Securities made crucial contributions to the Mirman/Rose fraud.

52. Dilley's assistant as of 2012 prepared the Form 211 and all related documents based on templates. The assistant was instructed that a Spartan Securities' principal would review the assistant's draft and revise it to match the facts particular to each issuer. Dilley's assistant submitted the Form 211 only upon Dilley's approval. The assistant would similarly draft responses to FINRA deficiency letters for review by a Spartan Securities principal (Lopez from early 2013 onward), and only sent the responses to FINRA upon that principal's (usually Lopez) express approval.

53. Dilley signed the Forms 211 for the Mirman/Rose Companies but was largely uninvolved in responding to FINRA's deficiency letters or investigating any red flags identified by FINRA.

54. By letter dated February 8, 2013, the Commission's examination staff identified deficiencies and weaknesses in Spartan Securities' compliance with certain federal securities laws, including (1) Spartan Securities' possible violation of Rule 15c2-11 by failing to adequately address numerous red flags and provide material information to FINRA in connection with an unrelated Form 211 application, and (2) Lopez's failure to adequately implement Spartan Securities' written procedures regarding Forms 211 which required Lopez to review the information outlined in Rule 15c2-11 together with any supplemental information obtained and to be alert to red flags.

55. As of 2013, Dilley and Eldred instructed the assistant to send draft responses to the FINRA deficiency letters to Lopez for review and approval. For example, by email dated October 18, 2013, the assistant wrote Eldred: "I know that Dave [Lopez] looks at these [draft deficiency responses] now, but he's been slammed . . . . Any chance you can make an exception and review this one?" Dilley tasked Lopez with that responsibility, for example, when Dilley was unavailable or because Lopez "has got a lot more experience."

56. Mirman and Rose were Spartan Securities' primary source of information throughout the Form 211 process. Mirman and Rose would provide Spartan Securities with documents in the name of the sole officer and many documents they prepared themselves, including spreadsheets detailing who solicited the shareholders and the relationship between the solicitor and shareholder. There were substantial similarities in these shareholders lists, including the sole officer of First Social appearing as a shareholder of 10 other Mirman/Rose Companies.

57. The assistant sent FINRA deficiency letters to Mirman and Rose without confirming or inquiring into the authority of Mirman and Rose to act for the Mirman/Rose Companies (i.e. if they were a reliable source of information), despite the fact that Mirman and Rose were not officers, directors or even named shareholders of any of the Mirman/Rose Companies.

58. Sometimes within one week of Mirman and Rose's solicitation, Spartan Securities submitted the Form 211 and a cover letter (with exhibits) to FINRA. However, Spartan Securities consistently misrepresented that: (1) the sole officer – not Mirman or Rose – called Dilley based on a referral (often from an attorney); (2) Spartan Securities agreed to file the Form 211 after "months" of due diligence; and (3) Spartan Securities had no prior relationship with the issuer or any of its "representatives" (despite repeatedly filing Forms 211 at Mirman and Rose's request).

59. For example, by email dated November 6, 2013, Rose solicited Dilley to file a Form 211 for Envoy Group and told Dilley: "We know the process, included is some due dil[igence] per our conversation" including a chart listing the Form S-1 shareholders and their purported relationships with each other. Spartan Securities filed the Envoy Group Form 211 five days later, misrepresenting that Envoy Group's sole officer contacted Dilley (with no mention of Rose), Spartan Securities had conducted due diligence over the past month, and Spartan Securities had no other relationship with Envoy Group's "representatives."

60. Each Form 211 cover letter also misrepresented that the issuer was "not working with any consultants" despite Dilley knowing or being reckless in not knowing that

Mirman and Rose had no publicly disclosed association with the Mirman/Rose Companies yet took various critical actions on their behalf.

61. Each Form 211 cover letter also misleadingly stated that "there are no other companies that the current officers or directors have requested a listing quotation on," despite Dilley knowing or being reckless in not knowing that Mirman or Rose, who acted as de facto officers and directors, had requested all Forms 211 for the Mirman/Rose Companies.

62. Each Form 211 cover letter also misrepresented that the issuer was not in negotiations for any actual or potential merger or acquisition, despite Dilley knowing or being reckless in not knowing that the first Mirman/Rose Company had been available for sale upon Form 211 clearance by FINRA and his involvement in numerous other sales by Mirman and Rose shortly after Form 211 clearance.

63. Each cover letter also attached a shareholder chart stating that the sole officer had solicited each shareholder as a "friend" and that no other people had been solicited to invest, when in fact Mirman and Rose had solicited the shareholders and reused many of the same shareholders across up to 12 Mirman/Rose Companies. Dilley knew or was reckless in not knowing that Mirman and Rose controlled all the shares given, among other things, the substantial similarities across the shareholder lists.

64. Each Form 211 cover letter also misrepresented that the Mirman/Rose Company was following a specific business plan, despite Dilley knowing or being reckless in not knowing that the issuer was merely a public vehicle being packaged for sale and controlled by Mirman and Rose.

65. Each Form 211 also misrepresented that Spartan Securities was not aware or in possession of any material information, including adverse information, regarding the Mirman/Rose Company, despite Dilley knowing or being reckless in not knowing that Mirman and Rose were undisclosed control persons developing the Mirman/Rose Company as a mere public vehicle to be sold as a shell.

66. No one at Spartan Securities questioned the accuracy of the Rule 15c2-11(a) information for any of the Mirman/Rose Companies. The Forms S-1 described start-up companies run exclusively by the sole officer with no mention of Mirman or Rose. Dilley did not even review (but "just kept on file") the Forms S-1 which were strikingly similar across the Mirman/Rose Companies, including: (1) the same number of issued shares; (2) similar annual budgets (purportedly for effectuation of vastly different business plans); (3) the same small offering size (dwarfed by the annual budgets); and (4) similar assets (all cash and substantially the same amount):

MIRMAN/ROSE COMPANY FORM S-1 DISCLOSURES

Mirman/Rose Company	Form S-1 Shares	Form S-1 Offering Size	# Of Shares In Name Of Sole Officer	Total Assets (All Cash)	Operating Budget (Duration)	Sole Officer # of Hours Work Week
Kids Germ	3,000,000	$30,000	9,000,000	$5,351	$400,000 (18 months)	10-25 hours
Obscene Jeans	3,000,000	$52,500	9,000,000	$9,000	$500,000 (18 months)	10-25 hours
On The Move	3,500,000	$52,500	9,000,000	$9,000	$477,500 (12 months)	10-25 hours
Rainbow Coral	2,500,000	$31,250	9,000,000	$8,912	$500,000 (18 months)	10-25 hours
First Titan	3,000,000	$37,500	9,000,000	$8,922	$587,500 (18 months)	10-25 hours
Neutra	3,000,000	$42,000	9,000,000	$8,900	$425,000 (12 months)	10-25 hours
Aristocrat	3,900,000	$39,000	9,000,000	$8,900	$500,000 (18 months)	10-25 hours
First Social	3,000,000	$45,000	9,000,000	$8,900	$475,000 (18 months)	10-25 hours
Global Group	3,000,000	$34,500	9,000,000	$8,900	$500,000 (18 months)	10-25 hours
E-Waste	3,000,000	$36,000	9,000,000	$8,301	$600,000 (18 months)	10-25 hours
First Independence	3,000,000	$34,500	9,000,000	$8,900	$500,000 (18 months)	10-25 hours
Envoy Group	3,000,000	$37,500	9,000,000	$8,908	$612,500 (18 months)	10-25 hours
Changing Technologies	3,000,000	$30,000	9,000,000	$8,900	$339,000 (18 months)	10-25 hours
First Xeris	3,000,000	$39,000	9,000,000	$8,976	$650,000 (18 months)	10-25 hours

67. Moreover, many Mirman/Rose Companies publicly filed periodic reports with the Commission prior to Form 211 clearance which reported no assets, revenues, or expenses other than professional fees.

68. In at least 7 deficiency letters (including those for First Independence, Changing Technologies and First Xeris), FINRA requested detailed information with respect to the circumstances surrounding the registered offering per the Form S-1, including how many persons were solicited and ultimately invested. Spartan Securities submitted shareholder charts stating that the sole officer had solicited each shareholder as a "friend," and reported the same solicitation success rate (24 solicited, 24 invested). The lists had remarkably similar features, including the same number of shares and shareholders, and overlapping rosters (some shareholders were the sole officer of other Mirman/Rose Companies and appeared on up to 12 lists).

69. In at least 12 deficiency letters (including those for First Independence, Envoy Group and First Xeris), FINRA specifically inquired whether anyone other than the named shareholders had control over any aspect of the shares, including "any past, present, or future arrangements." Spartan Securities conducted no inquiry despite, among other things, the striking similarities across rosters that contained the same shareholder names, Dilley's involvement in bulk sales of all shares by Mirman and Rose, and Island Stock Transfer's bulk issuance and transfer of all shares of Mirman/Rose Companies.

70. Spartan Securities also failed to inquire regarding numerous red flags as required by Rule 15c2-11, which requires a broker-dealer to evaluate any "adverse information" in its possession when determining whether it has a reasonable basis for the

accuracy of information and reliability of its source. For Spartan Securities, such red flags included the substantial similarities in the Forms S-1, the substantially similar shareholder rosters, the use of sole officers who were related to each other and appeared as shareholders on other Mirman/Rose Companies, and Mirman and Rose as the same solicitors and sources of information across the Mirman/Rose Companies.

71. FINRA also posed several other issuer-specific questions or concerns in its deficiency letters. In responding to FINRA's deficiency letters, Spartan Securities did not follow its own written policies and procedures which required that the assistant "together with the CCO or other designated officer gather information from the issuer to respond to the FINRA comments" in deficiency letters and investigate red flags. Spartan Securities' procedures further required the designated officer to initial each page of correspondence to FINRA evidencing that review and investigation. None of Spartan Securities' correspondence to FINRA in connection with the Mirman/Rose Companies contained any such initials.

72. Lopez cursorily reviewed and approved Spartan Securities' responses to at least the following deficiency letters for the Forms 211 of First Independence, Envoy Group, Changing Technologies and First Xeris:

Mirman/Rose Company	**Date of FINRA Deficiency Letter**	**Date of Spartan Response**	**Number of Questions from FINRA**
First Independence	2/27/2013	3/12/2013	7
Envoy Group	11/21/2013	11/25/2013	6
Envoy Group	12/5/2013	12/9/2013	1
Envoy Group	12/17/2013	12/18/2013	1
Changing Technologies	12/3/2013	12/17/2013	4
First Xeris	2/7/2014	2/13/2014	5

73. Lopez approved each response within an hour of the assistant's request, making no inquiry into FINRA's questions (or the issuer more generally) despite FINRA raising at least 24 questions about these four issuers.

74. For example, FINRA questioned whether First Independence was a "shell company" despite its non-shell designation in periodic reports. Despite understanding that any shell issue should be investigated by asking the issuer basic questions about its business operations to see whether it is a "blank check company, that there's an ongoing effort to further the business plan," Lopez made no such investigation or inquiry with respect to First Independence's business operations or purpose.

75. Spartan Securities (including Lopez) failed to review Rule 15c2-11 information or inquire further regarding red flags that were expressly raised by FINRA on the subsequently filed Forms 211. On the Envoy Group Form 211, in its deficiency letter dated November 21, 2013, FINRA asked Spartan Securities for detailed descriptions of the relationships between: (1) Envoy Group, Jocelyn Nicholas (Envoy Group's sole officer) and Mark Nicholas (Kids Germ's sole officer); (2) Envoy Group, Jocelyn Nicholas, Mark Nicholas, and Kids Germ; and (3) Mark Nicholas and Spartan Securities. By email dated November 22, 2013, Dilley's assistant forwarded this letter to Dilley and Lopez, and alerted them to the facts that "Shelly [Rose] sent us this one" and that Spartan Securities had filed the Form 211 for Kids Germ. Dilley and Lopez conducted no investigation into the two issuers (including whether Rose was a reliable source for Envoy Group) or Spartan Securities' relationship with either of them. Specifically, Lopez merely told the assistant that "I am not familiar with any of those people or that company," and Dilley instructed the assistant simply to rely on Envoy Group's

response. Lopez then approved the deficiency response, which misrepresented that the only relationship among all the identified parties was the spousal relationship between Jocelyn and Mark Nicholas, Envoy Group's sole officer had "no participation in any way with Kids Germ," and Spartan Securities had no relationship with Kids Germ "and/or any of its representatives."

76. In its deficiency letter dated November 25, 2013, FINRA inquired a second time for details of any relationship between Envoy Group's sole officer and Kids Germ. Lopez approved the deficiency response, which misrepresented that Envoy Group's sole officer's only relationship with Kids Germ was as a 0.42% shareholder despite the fact that she was also an officer of Kids Germ.

77. Dilley and Lopez had numerous facts readily in their possession contradicting these representations and the Rule 15c2-11 information, including: (1) Spartan Securities through Dilley filed both the Envoy Group and Kids Germ Form 211, and Kids Germ's DTC application, at Rose's request; (2) Spartan Securities possessed numerous documents showing that Envoy Group's sole officer had become a Kids Germ officer per Spartan Securities' advice to Rose to obtain DTC eligibility; (3) Lopez acted on Rose's authorization to speak with an auditor for Kids Germ despite Rose not being an officer, director, or authorized person on Kids Germ's Corporate Authorization Form; (4) Envoy Group and Kids Germ had 11 shareholders in common (including the sole officers of two other Mirman/Rose Companies) and the same capitalization structure (9,000,000 share control block, 3,000,000 Form S-1 shares among 24 shareholders); and (5) Dilley attempted to arrange a sale of Kids Germ for Rose.

78. On November 6, 2013, Mirman told Dilley "I need to file a 211 through your firm" for Changing Technologies. That same day, Rose had solicited Dilley to file the Form

211 for Envoy Group. Dilley told Mirman: "Funny you guys called me within a few minutes of each other." Dilley then put Spartan Securities and Island Stock Transfer employees in contact with Mirman, who in turn approved the certified shareholder list for Changing Technologies which Spartan Securities submitted to FINRA with the Form 211.

79. Dilley drafted the portion of the Form 211 representing that Mirman had referred Changing Technologies to Spartan Securities, but that Spartan Securities "does not have any other relationship with Al Mirman." Dilley knew or was reckless in not knowing that this statement was false given the fact that Spartan Securities filed this and other Forms 211 at Mirman's request.

80. By deficiency letter dated December 3, 2013, FINRA asked Spartan Securities for a "detailed explanation of the Issuer's relationship with Al Mirman." Spartan Securities sent FINRA's deficiency letter only to Mirman to address this and other questions. Spartan Securities misrepresented to FINRA that the sole officer approached Mirman, a social acquaintance, for a broker-dealer recommendation and "Mirman has no relationship with Changing Technologies." Lopez authorized this response despite Mirman having solicited Spartan Securities, sent Spartan Securities a series of documents for the Form 211, and approved the certified shareholder list which Spartan Securities submitted to FINRA with the Form 211. Moreover, no one at Spartan Securities (including Lopez) conducted any investigation into Mirman's disciplinary history, including his being barred by FINRA in 2007 from association with any FINRA member.

Island Stock Transfer's Involvement in the Mirman/Rose Fraud

81. Mirman and Rose retained Island Stock Transfer as the transfer agent for at least 12 of the Mirman/Rose Companies at or around the same time as retaining Spartan Securities to file the Form 211. For example, by email dated June 29, 2012, Dilley instructed an employee from each of Spartan Securities and Island Stock Transfer to "send [Rose] 211 docs. [Transfer agent] agreement same terms as last deal they sent us."

82. Dilley, Island Stock Transfer's president, originated each relationship and personally took a number of steps on behalf of Island Stock Transfer for Mirman and Rose. Island Stock Transfer's employees also ignored a host of red flags indicating that Mirman and Rose controlled the issuers as blank check companies and sold all the securities of those issuers owned by affiliates.

83. Island Stock Transfer has extensive written policies and procedures, which it largely ignored in its various transfer agent functions for the Mirman/Rose Companies. Island Stock Transfer's policies and procedures contained many provisions intended to ensure that Island Stock Transfer employees communicated only with authorized persons as identified in writing by the issuer clients. As part of the initial "client" package (sent to Mirman or Rose), Island Stock Transfer requested the issuer to complete a "Corporate Authorization Form" to identify those persons with whom Island Stock Transfer could communicate about the issuer. Mirman or Rose was named as an authorized person for only two of the 12 Mirman/Rose Companies for which Island Stock Transfer acted as transfer agent, yet for all 12 companies Island Stock Transfer took directions exclusively from Mirman and Rose.

84. Island Stock Transfer's policies and procedures also required the issuer to provide a "list of insiders/control persons" at the onset of the relationship. Island Stock Transfer's employees requested such lists from Mirman and Rose (not the sole officer), but never received one for any of the Mirman/Rose Companies.

85. According to Island Stock Transfer's policies and procedures, all transfer records and shareholder lists are the "highly confidential" property of the issuer, and "shall not be given to unauthorized parties under any circumstances." Moreover, Island Stock Transfer's policies and procedures stated that "[s]hareholders may inquire about shares they own personally, but may not be provided with information concerning any other shareholder." Nonetheless, Island Stock Transfer employees consistently provided both issuer and shareholder information to Mirman and Rose without inquiry.

86. At Dilley's instruction, Island Stock Transfer employees exclusively communicated with and took direction from Mirman and Rose – and not the sole officer or shareholders – regarding both the issuers and the shares in the names of the friends and family. Island Stock Transfer first prepared a certified shareholder list with personal information provided by Mirman and Rose. Island Stock Transfer employees (some of whom were also employees of Spartan Securities, which used the lists for the pending Forms 211) requested and acted on Mirman and Rose's approval of the list. Also, by email dated February 8, 2013, Rose instructed Dilley to make changes to the certified shareholder list of a Mirman/Rose Company.

87. Mirman and Rose then requested Island Stock Transfer to prepare stock certificates without a restrictive legend (stamped on the certificate to indicate that the shares

are restricted from transfer or sale) in the names of the same number of friends-and-family shareholders (24). Island Stock Transfer's policies and procedures provided that shares without restrictive legend "can NOT be issued in the name of an insider" (emphasis in original). Island Stock Transfer training materials reiterated that "Insiders ALWAYS have restricted stock" (emphasis in original). Island Stock Transfer's Director of Operations, who trained the lower-level employees, knew that "insider" included "affiliates" as defined in Rule 144 of the Securities Act. Despite the "affiliate" definition including those controlled by or together with an issuer, the Director of Operations only looked to see if the shareholder was a named officer or 15%+ shareholder (or spouse of either one) to determine the "insider" or "affiliate" status. Even so, Island Stock Transfer issued unlegended certificates in the name of the spouse of the sole officer for at least 4 Mirman/Rose Companies.

88. Island Stock Transfer delivered all 24 certificates to Mirman and Rose (who were not named shareholders), despite Island Stock Transfer's policies and procedures that shareholder information could only be provided to the shareholders themselves. For example, on February 14, 2013, Island Stock Transfer asked Rose for delivery instructions for "each certificate" of First Independence stock. Rose directed Island Stock Transfer to "mail all of the certificates to me as always in the past."

89. Shortly after the clearance of Spartan Securities' Form 211, Mirman and Rose requested Island Stock Transfer's assistance with DTC applications premised on the securities being unrestricted. Island Stock Transfer submitted at least 12 DTC transfer agent attestation forms (6 signed by Dilley) attesting that it would comply with DTC's operational requirements, including exercising diligence in the related securities transactions and providing DTC with

complete and accurate information about the securities. Island Stock Transfer also received $7,500 from Envoy Group in connection with a DTC "services agreement."

90. Island Stock Transfer, at the direction of Mirman or Rose, routinely transferred an unlegended certificate in the name of one friend-and-family shareholder to Cede & Co. in order to secure DTC eligibility. Dilley and other Island Stock Transfer employees also fielded Rose's frequent urgent requests for updates on the DTC applications.

91. Island Stock Transfer then effectuated the bulk transfer of all or virtually all the securities (both the control block in the name of the sole officer and the friends-and-family shares) of at least 12 Mirman/Rose Companies through the preparation and delivery of unlegended stock certificates to a small buyer group. The same or substantially similar groups (represented by the same counsel) purchased multiple Mirman/Rose Companies.

92. Island Stock Transfer received instruction letters from buyer's counsel who presented Island Stock Transfer with blank stock powers (sometimes dated months earlier) for the entire set of certificates that Island Stock Transfer had originally delivered to Mirman or Rose. The instruction letters detailed how all the shares would be transferred. For some issuers, there was a single instruction letter indicating that all shares were simultaneously being purchased pursuant to attached stock purchase agreements "of like tenor" with Rose identified as "Seller's Representative." For other issuers, Island Stock Transfer received 5-6 instruction letters from the same counsel in a short period of time with a series of stock purchase agreements with the same effective date and purchase price.

93. Island Stock Transfer received a legal opinion letter for only two of the 12 bulk transfers (First Independence and First Social). Those two letters were from the same lawyer

(Harrison) on the same day with obvious misstatements that First Independence was not a "shell" company and First Social's sole officer's spouse was not an "affiliate" of First Social.

94. Shortly after the bulk transfers, Island Stock Transfer continued to support the small buyer groups in transferring their certificates into Cede & Co. and broker positions by which the buyer groups publicly traded shares of the Mirman/Rose Companies. For example, First Independence became the subject of a fraudulent pump-and-dump in public trading shortly after FINRA's clearance of Spartan Securities' Form 211 and Island Stock Transfer's bulk transfer of First Independence securities.

95. Island Stock Transfer routinely processed the bulk transfers without restrictive legend solely on the basis of the instruction letters and blank stock powers, and despite knowing or recklessly not knowing – and ignoring red flags – that the bulk transfers involved affiliates. The bulk nature of the sale itself was indicative of the affiliate status of the sellers – i.e. the fact that all shares were being sold at the same time to a small group of buyers indicated common control over all such shares.

96. For example, in October 2011, Island Stock Transfer transferred all the securities of two Mirman/Rose Companies (Rainbow Coral and Neutra) to the same buyers' counsel. Dilley had recently signed the Forms 211 for both issuers upon Mirman and Rose's request. Dilley was also aware that in September 2011 Mirman had ordered Island Stock Transfer to pay a Rainbow Coral invoice out of funds attributed to Neutra. Also in September 2011, Rose requested that Island Stock Transfer transfer the certificate of one Neutra shareholder to a buyer who, two weeks later, was part of the bulk transfer of all other Neutra

securities. Dilley signed unlegended certificates for both the Neutra and Rainbow Coral bulk transfers on the same day.

97. Similarly, in December 2012 and January 2013, Dilley signed letters on behalf of Island Stock Transfer at Mirman and Rose's request expressly in furtherance of Mirman and Rose's selling E-Waste and Global Group. In January and February 2013, Island Stock Transfer received instructions from the same buyers' counsel for the transfer of virtually all the securities of E-Waste and Global Group to the same group of five buyers (including an entity in the counsel's name). Island Stock Transfer also received a stock purchase agreement providing that "all of the free trading shares" of E-Waste were being purchased pursuant to stock purchase agreements "of like tenor" with Rose as "Seller's Representative."

98. Later in 2013, Island Stock Transfer similarly delivered all the shares of two other Mirman/Rose Companies (First Independence and First Social) to the same buyer's counsel based on instructions to transfer all the "free-trading" securities at the same time as the control block.

99. In June and July 2014, Island Stock Transfer effectuated the bulk transfer of all the securities of Changing Technologies per instruction letters and blank stock powers on behalf of the same or substantially similar buyer group represented by the same counsel as at least four other Mirman/Rose Companies. Island Stock Transfer's "batch" (the set of documents reviewed for the transfer requests) included an email exchange dated June 3, 2014, between Mirman and the buyer's counsel with respect to the stock certificate of one of the friends-and-family shareholders for whom Island Stock Transfer had already issued a new certificate in the name of Cede & Co. The buyer's counsel told Mirman that it was missing

that shareholder's certificate. Mirman responded: "His stock was deposited with [a broker] for DTC purposes. You have to have someone open an account with [the broker] and purchase the stock at a nominal amount." Despite these indications of Mirman's control over the bulk transfer of all the "free-trading" shares of Changing Technologies to one buyer group, Island Stock Transfer delivered unlegended certificates for all of the other outstanding shares to the buyer's counsel.

B. The Daniels/Fan/Harrison Shell Factory

100. Daniels, Fan and Harrison manufactured undisclosed blank check companies based on a deceptive public float of purportedly unrestricted shares. Other than PurpleReal, Daniels acquired a small local business and filed a Form S-1 secondary offering for shares he had gifted to approximately 30 friends and family. Daniels and Harrison then orchestrated Form 211 and DTC applications for the float to be eligible for open-market trading and clearing.

101. Daniels and Harrison sold their first company, Dinello/AF Ocean, to Fan for approximately $500,000 in Fan's endeavor to amass a roster of public companies for later reverse mergers with Chinese companies. Daniels and Fan then agreed to create three more public vehicles from scratch: Court/ChinAmerica, Wallbeds/Sichuan, and TTB/Ibex.

102. Daniels and Harrison retained Spartan Securities to file the following Forms 211:

Daniels Company	Form 211 Filing Date	Form 211 Clearance Date	Form 211 Signatory
Dinello/AF Ocean	5/20/2011	06/14/2011	Dilley
Court/ChinAmerica	7/24/2012	8/30/2012	Eldred
Wallbeds/Sichuan	10/25/2012	11/30/2012	Eldred
TTB/Ibex	9/6/2013	10/29/2013	Eldred

PurpleReal	7/31/2014	N/A (stop order)	Eldred

Eldred's Knowledge of/Participation in the Daniels/Fan/Harrison Fraud

103. Daniels and Harrison have been friends with Eldred for at least 10 years. Harrison and Eldred's wife had each been the sole officer of an issuer which had been acquired by reverse merger or other change-in-control transaction. Harrison and Daniels had assisted with the registration and sale of the issuer associated with Eldred's wife. Eldred had offered that issuer to a prospective buyer performing a "shell search" in October 2009, and Daniels referred to that issuer as a "vehicle" in March 2010.

104. By email dated November 30, 2010, Eldred asked Harrison if regulators would have concern if his wife "creates another public company." Harrison responded that she and Daniels "are filing [Dinello/AF Ocean] under my name and it has been two years since [Harrison's other public company's] acquisition."

105. Eldred otherwise understood Daniels to be a principal (albeit undisclosed) of Dinello/AF Ocean. In April 2011, Daniels requested that Eldred prepare an Island Stock Transfer transfer agent agreement for Dinello/AF Ocean. In return for waiving Island Stock Transfer's normal $7,500 setup fee, Eldred asked Harrison to modify Island Stock Transfer's form contract by "put[ting] a paragraph in the contract that if the company does a reverse merger or there is a change of control then . . . there is a $5,000 termination fee," a red flag that the issuer was intended to be sold from the onset.

106. Spartan Securities then filed Dinello/AF Ocean's Form 211 in May 2011 misrepresenting that the current and future business plan was the operation of a pizzeria, there was no present or future arrangement with respect to the transfer of any shares, and Spartan

Securities was not aware or in possession of any material or adverse information about Dinello/AF Ocean. Spartan Securities also misrepresented that Eldred was contacted by the named officer (other than Harrison) of Dinello/AF Ocean, whose identity Daniels and Harrison used to create the façade of independent management and who never communicated with and had not even heard of Spartan Securities or Eldred.

107. Soon after Form 211 clearance, by email dated July 20, 2011, Daniels asked Eldred if he knew whether a law firm was "doing any [reverse mergers] that they may need a shell for?" Two days later, Eldred referred that law firm to Daniels for "an OTCBB vehicle that [Daniels] would like to do something with." On August 18, 2011, Daniels again asked Eldred about "available vehicles for a [reverse merger]" with Dinello/AF Ocean.

108. Eldred also assisted Daniels with DTC eligibility for Dinello/AF Ocean. In June 2011, Spartan Securities initiated the DTC application misrepresenting that Dinello/AF Ocean was "not a shell" and otherwise eligible for electronic clearance. The application was granted in July 2011, but revoked because there was no subsequent deposit of shares into the DTC system. By email dated October 10, 2011, Eldred told Daniels "I'm working on getting it fixed for you" and discussed internally that an "x-clear transaction needs to take place" for DTC eligibility to be reinstated.

109. That same day, Eldred signed securities deposit forms misrepresenting that Daniels was never an "affiliate" of Dinello/AF Ocean. Specifically, in signing the forms, Eldred misrepresented to Spartan Securities' clearing firm that he had "carefully reviewed" the request and supporting documents, and to his "best knowledge the information is true and

correct and is made in compliance with all applicable federal and state securities laws" – despite knowing or being reckless in not knowing that Daniels controlled Dinello/AF Ocean.

110. On October 12, 2011, Eldred was copied on an email confirming that Spartan Securities was putting in an order to sell Dinello/AF Ocean shares on Daniels' behalf. In fact, a Spartan Securities proprietary account purchased Daniels' shares. Eldred confirmed with Daniels that this trade "has your problem worked out as long as DTC cooperates with our plan."

111. As early as October 2011, Eldred knew or was reckless in not knowing that Daniels and Harrison had sold Dinello/AF Ocean to Fan. In or about June 2012, Eldred first negotiated with Fan to use Dinello/AF Ocean as a "public shell" for a potential reverse merger with Spartan Securities and Island Stock Transfer's parent company. By email dated July 11, 2012, Eldred wrote Fan (copying Daniels and Harrison): "The net result is that you and your investors get an equity interest in our business, and you end up with the same basic public OTCBB shell that you have now."

112. Eldred also became aware that Daniels and Fan were manufacturing Court/ChinAmerica, Wallbeds/Sichuan, and TTB/Ibex for Fan as public vehicles. On July 24, 2012, Spartan Securities filed the Form 211 for Court/ChinAmerica with Eldred signing as the principal responsible for all related submissions to FINRA. On July 30, 2012, Daniels told Eldred "Don't forget that Andy [Fan] has three companies that he is doing registrations on including the 211 we filed on Court. So there should be plenty of room for you to have a meeting of the minds with [Fan]. Court is a super clean company that is a non-shell and the assets are fully depreciated so there can be a disposal of assets for a real clean deal." By email

dated July 30, 2012, Eldred responded "I would be happy to use Court as a vehicle" while its Form 211 was pending.

113. Eldred took further actions for Court/ChinAmerica, Wallbeds/Sichuan, and TTB/Ibex knowing or being reckless in not knowing that both Fan's involvement in and the purpose of the issuers were undisclosed. On September 5, 2012, Eldred received an email (with the subject "AF Ocean Investment") from an Island Stock Transfer employee to sign up Wallbeds/Sichuan as "yet another company with [Island Stock Transfer]." Eldred forwarded the message to Daniels and asked him to "call me."

114. In October 2012, Eldred approved Spartan Securities' submission of a price quote to FINRA for Court/ChinAmerica per the request of an employee of Dinello/AF Ocean, which Eldred himself had referred to as a "public OTCBB shell that [Fan has] now." In January 2013, Eldred was forwarded a request from an AF Ocean employee for a transfer agent agreement for TTB/Ibex. Eldred then sent Daniels the TTB/Ibex agreement with the same terms as Dinello/AF Ocean, including the waiver of all upfront fees in favor of a fee in the event of a reverse merger.

115. Despite knowing or recklessly not knowing that these issuers were being developed as public vehicles for Fan, Eldred signed the three Forms 211 misrepresenting that each issuer was pursuing local business operations with no plans for mergers or changes of control despite, for example, Eldred himself proposing to "use [Court/ChinAmerica] as a vehicle" while its Form 211 was pending. The three Forms S-1 (part of the Rule 15c2-11(a) information) made these same misrepresentations, and also omitted any reference to Fan. The

three Forms 211 also misrepresented that Spartan Securities had no other material or adverse information in its possession.

116. In these three Forms 211, Spartan Securities also misrepresented that it had no relationship with any officer or representative, despite (1) Daniels assisting the Eldreds with the sale of the prior public company in the name of Eldred's wife; (2) Daniels being a customer with whom Spartan Securities entered open-market trades, (3) Eldred assisting Daniels with a shell buyer for Dinello/AF Ocean, and (4) Daniels assisting Spartan Securities in finding a potential reverse merger candidate (including all three Fan issuers).

117. Spartan Securities also misrepresented the manner in which it was solicited to file the Form 211. On Wallbeds/Sichuan and TTB/Ibex, Spartan Securities misrepresented that Eldred had been telephonically contacted by a "friend" (a Dinello/AF Ocean employee), and had no relationship with any of their representatives (e.g. Daniels). FINRA then asked for more detail on the manner of solicitation in its first Wallbeds/Sichuan deficiency letter. The assistant sent Eldred the portion of the Form 211 on the manner of solicitation: "Am I missing something here, or did I do something wrong?" Eldred told the preparer just to "remove the friend part," which remained in the later Form 211 for TTB/Ibex.

118. Spartan Securities also failed to inquire further regarding the presence of other red flags. For example, on both Court/ChinAmerica and Wallbeds/Sichuan, by letters dated July 27, 2012 and November 5, 2012, respectively, FINRA noted that numerous shareholders purportedly purchased shares with sequentially numbered cashier's checks (a potential sign of someone other than the shareholder paying for the shares). Spartan Securities' own policies and procedures (and SEC guidance) identify the "transfer of shares by control persons, as gifts,

to third persons in order to help create a public market" as a red flag. Without any further inquiry into the information containing red flags, Spartan Securities simply cut-and-pasted responses received on behalf of the issuers (from Harrison and a Dinello/AF Ocean employee) that one shareholder obtained the checks with cash gathered from the others, when in fact it was Daniels who provided all of the cash for the purchase of the cashier's checks.

119. Spartan Securities ignored other red flags, including the fact that the same officers and shareholders were involved (up to 26 of the 29 shareholders overlapped on substantially similar "regression diagrams" of the history of share transfers) and each Form S-1 was for a secondary offering by which a small company was not raising any money yet incurring all the expenses related to the offering. Eldred did not review the Forms S-1 in connection with the Forms 211 as required by Rule 15c2-11.

120. Eldred later signed the Form 211 and received draft deficiency letter responses for TTB/Ibex. FINRA's deficiency letter raised eight detailed questions, including inquiries into: (1) all relationships among the shareholders and officers; (2) present or future arrangements by which any person other than the named shareholder had control over the Form S-1 shares; (3) confirmation of the Form 211's representation that TTB/Ibex had no intent either to effect a sale of shares or engage in change-of-control transaction; and (4) TTB/Ibex's shell company status. Spartan Securities cut-and-pasted a response letter drafted by a Dinello/AF Ocean employee which listed Fan merely as an officer of TTB/Ibex as of September 2013 and the shareholders (the vast majority of which were shareholders of Dinello/AF Ocean, Court/ChinAmerica, and Wallbeds/Sichuan) as friends of Daniels. However, Spartan Securities failed to disclose any aspect of the Daniels/Fan/Spartan Securities

relationship. Specifically, Spartan Securities stated that TTB/Ibex had no intent to engage in a change-of-control transaction and that the purported business objective (local pressure washing services) would be followed for at least one year, despite Eldred knowing or being reckless in not knowing of Daniels and Fan's manufacture of public shells for Fan without regard to the purported local business operations.

121. Beyond the initial Forms 211 (and Spartan Securities' initiation of unpriced quotations), Eldred approved submissions of priced quotations to FINRA pursuant to Rule 15c2-11 for Court/ChinAmerica, TTB/Ibex, and Wallbeds/Sichuan in December 2013, January 2014 and May 2014, respectively – just prior to the public trading in those stocks initiated by Daniels and the Dinello/AF Ocean employee. FINRA rejected the initial $0.10 quote on TTB/Ibex given the Form S-1 offering price of $0.01. By email dated January 6, 2014, Eldred acted upon the authorization of Daniels, who was no longer an officer of TTB/Ibex, to lower the quote to that price.

122. In July 2014, Harrison contacted Eldred to file a Form 211 for PurpleReal. FINRA requested proof of payment by the shareholders (many of whom were shareholders of the other Daniels Companies). Eldred learned that Daniels and Harrison had paid for all the shares, but by email approved Spartan Securities' response to FINRA misrepresenting that the shareholders had purchased their shares.

COUNT I

Violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act

(Against Spartan Securities)

123. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

124. From at least as early as January 2010 through at least May 2014, Spartan Securities published quotations for securities or, directly or indirectly, submitted quotations for publication, in any quotation medium without having a reasonable basis for believing, based on a review of the documents and information required by Rule 15c2-11(a)(1) through (a)(5) ("paragraph (a) information") together with other documents and information required by Rule 15c2-11(b), that the paragraph (a) information was accurate in all material respects and that the sources of that information were reliable.

125. By reason of the foregoing, Spartan Securities violated, and, unless enjoined, is reasonably likely to continue to violate, Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2), and Rule 15c2-11, 17 C.F.R. § 240.15c2-11.

COUNT II

Aiding and Abetting Violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act

(Against Dilley, Eldred, and Lopez)

126. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

127. From at least as early as January 2010 through at least May 2014, Spartan Securities published quotations for securities or, directly or indirectly, submitted quotations for publication, in any quotation medium without having a reasonable basis for believing, based on a review of the paragraph (a) information together with other documents and information required by Rule 15c2-11(b), that the paragraph (a) information was accurate in all material respects and that the sources of that information were reliable, and by reason of the foregoing, violated Section 15(c)(2) and Rule 15c2-11 of the Exchange Act, 15 U.S.C. § 78o(c)(2), and 17 C.F.R. § 240.15c2-11.

128. From at least as early as January 2010 through at least March 2014, Dilley knowingly or recklessly provided substantial assistance to Spartan Securities' violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act, 15 U.S.C. § 78o(c)(2), and 17 C.F.R. § 240.15c2-11, and is deemed to be in violation of this provision to the same extent as Spartan Securities.

129. From at least as early as June 2011 through at least May 2014, Eldred knowingly or recklessly provided substantial assistance to Spartan Securities' violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act, 15 U.S.C. § 78o(c)(2), and 17 C.F.R. § 240.15c2-11, and is deemed to be in violation of this provision to the same extent as Spartan Securities.

130. From at least as early as March 2013 through at least March 2014, Lopez knowingly or recklessly provided substantial assistance to Spartan Securities' violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act, 15 U.S.C. § 78o(c)(2), and 17 C.F.R.

§ 240.15c2-11, and is deemed to be in violation of this provision to the same extent as Spartan Securities.

131. By reason of the foregoing, Dilley, Eldred, and Lopez aided and abetted and, unless enjoined, are reasonably likely to continue to aid and abet, violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act, 15 U.S.C. § 78o(c)(2), and 17 C.F.R. § 240.15c2-11.

COUNT III

Violations of Section 17(a)(1) of the Securities Act

132. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

133. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer, and Dilley, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly knowingly or recklessly employed any device, scheme or artifice to defraud.

(Against Spartan Securities and Eldred – Daniels Companies)

134. From at least as early as May 2011 through at least August 2014, Spartan Securities and Eldred, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, knowingly or recklessly employed any device, scheme or artifice to defraud.

135. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT IV

Violations of Section 17(a)(3) of the Securities Act

136. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

137. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer and Dilley, in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, negligently engaged in transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon the purchasers and prospective purchasers of such securities.

(Against Spartan Securities and Eldred – Daniels Companies)

138. From at least as early as May 2011 through at least August 2014, Spartan Securities and Eldred, in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, negligently engaged in transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon the purchasers and prospective purchasers of such securities.

139. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

COUNT V

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

140. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

141. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer, and Dilley, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

(Against Spartan Securities and Eldred – Daniels Companies)

142. From at least as early as May 2011 through at least May 2014, Spartan Securities and Eldred, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities.

143. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(a) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a).

COUNT VI

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

144. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

145. From at least as early as December 2009 through at least April 2014, Spartan Securities, Island Stock Transfer, and Dilley, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the purchase or sale of securities.

(Against Spartan Securities and Eldred – Daniels Companies)

146. From at least as early as May 2011 through at least May 2014, Spartan Securities and Eldred, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the purchase or sale of securities.

147. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

COUNT VII

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

148. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

149. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer, and Dilley, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person in connection with the purchase or sale of securities.

(Against Spartan Securities and Eldred – Daniels Companies)

150. From at least as early as May 2011 through at least May 2014, Spartan Securities and Eldred, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person in connection with the purchase or sale of securities.

151. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c).

COUNT VIII

Aiding and Abetting Violations of Section 17(a)(1) of the Securities Act

152. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities and Eldred – Daniels Companies)

153. From at least as early as July 2010 through at least August 2014, Daniels, Fan and Harrison, in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, knowingly or recklessly employed devices, schemes or artifices to defraud, and by reason of the foregoing, violated Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

154. From at least as early as May 2011 through at least August 2014, Spartan Securities and Eldred knowingly or recklessly provided substantial assistance to Daniels, Fan, and Harrison's violations of Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1), and are deemed to be in violation of this provision to the same extent as Daniels, Fan, and Harrison.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

155. From at least as early as January 2009 through at least July 2014, Mirman and Rose, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, knowingly or recklessly employed devices, schemes or artifices to defraud, and by reason of the foregoing, violated Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

156. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer, and Dilley knowingly or recklessly provided substantial

assistance to Mirman and Rose's violations of Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1), and are deemed to be in violation of this provision to the same extent as Mirman and Rose.

157. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred aided and abetted and, unless enjoined, are reasonably likely to continue to aid and abet, violations of Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

COUNT IX

Aiding and Abetting Violations of Section 17(a)(2) of the Securities Act

158. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities and Eldred – Daniels Companies)

159. From at least as early as July 2010 through at least May 2014, Daniels, Fan, and Harrison, in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, negligently obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and by reason of the foregoing, violated Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

160. From at least as early as May 2011 through at least May 2014, Spartan Securities and Eldred knowingly or recklessly provided substantial assistance to Daniels, Fan, and Harrison's violations of Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), and are deemed to be in violation of this provision to the same extent as Daniels, Fan, and Harrison.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

161. From at least as early as January 2009 through at least July 2014, Mirman and Rose, in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, negligently obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and by reason of the foregoing, violated Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

162. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer, and Dilley knowingly or recklessly provided substantial assistance to Mirman and Rose's violations of Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), and are deemed to be in violation of this provision to the same extent as Mirman and Rose.

163. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred aided and abetted and, unless enjoined, are reasonably likely to continue to aid and abet, violations of Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

COUNT X

Aiding and Abetting Violations of Section 17(a)(3) of the Securities Act

164. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities and Eldred – Daniels Companies)

165. From at least as early as July 2010 through at least August 2014, Daniels, Fan and Harrison, in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, negligently engaged in transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon the purchasers and prospective purchasers of such securities, and by reason of the foregoing, violated Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

166. From at least as early as May 2011 through at least August 2014, Spartan Securities and Eldred knowingly or recklessly provided substantial assistance to Daniels, Fan and Harrison's violations of Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3), and are deemed to be in violation of this provision to the same extent as Daniels, Fan, and Harrison.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

167. From at least as early as January 2009 through at least July 2014, Mirman and Rose, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, negligently engaged in transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon the purchasers and prospective purchasers of such securities, and by reason of the foregoing, violated Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

168. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer, and Dilley knowingly or recklessly provided substantial assistance to Mirman and Rose's violations of Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3), and are deemed to be in violation of this provision to the same extent as Mirman and Rose.

169. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred aided and abetted and, unless enjoined, are reasonably likely to continue to aid and abet, violations of Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

COUNT XI

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

170. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities and Eldred – Daniels Companies)

171. From at least as early as July 2010 through at least May 2014, Daniels, Fan and Harrison, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities, and by reason of the foregoing, violated Section 10(b) and Rule 10b-5(a) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a).

172. From at least as early as May 2011 through at least May 2014, Spartan Securities and Eldred knowingly or recklessly provided substantial assistance to Daniels, Fan and Harrison's violations of Section 10(b) and Rule 10b-5(a) of the Exchange Act, 15 U.S.C.

§ 78j(b) and 17 C.F.R. § 240.10b-5(a), and are deemed to be in violation of these provisions to the same extent as Daniels, Fan and Harrison.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

173. From at least as early as January 2009 through at least July 2014, Mirman and Rose, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly employed devices, schemes or artifices to defraud in connection with the purchase or sale of securities, and by reason of the foregoing, violated Section 10(b) and Rule 10b-5(a) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a).

174. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer, and Dilley knowingly or recklessly provided substantial assistance to Mirman and Rose's violations of Section 10(b) and Rule 10b-5(a) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), and are deemed to be in violation of these provisions to the same extent as Mirman and Rose.

175. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred aided and abetted and, unless enjoined, are reasonably likely to continue to aid and abet, violations of Section 10(b) and Rule 10b-5(a) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a).

COUNT XII

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

176. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities and Eldred – Daniels Companies)

177. From at least as early as July 2010 through at least May 2014, Daniels, Fan and Harrison, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the purchase or sale of securities, and by reason of the foregoing, violated Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

178. From at least as early as May 2011 through at least May 2014, Spartan Securities and Eldred knowingly or recklessly provided substantial assistance to Daniels, Fan and Harrison's violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b), and 17 C.F.R. § 240.10b-5(b), and are deemed to be in violation of these provisions to the same extent as Daniels, Fan and Harrison.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

179. From at least as early as January 2009 through at least July 2014, Mirman and Rose directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly made untrue statements of material facts and omitted

to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the purchase or sale of securities, and by reason of the foregoing, violated Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

180. From at least as early as December 2009 through at least July 2014, Spartan Securities, Island Stock Transfer, and Dilley knowingly or recklessly provided substantial assistance to Mirman and Rose's violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b), and are deemed to be in violation of these provisions to the same extent as Mirman and Rose.

181. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred aided and abetted and, unless enjoined, are reasonably likely to continue to aid and abet, violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

COUNT XIII

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

182. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

(Against Spartan Securities and Eldred – Daniels Companies)

183. From at least as early as July 2010 through at least May 2014, Daniels, Fan and Harrison, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person in

connection with the purchase or sale of securities, and by reason of the foregoing, violated Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c).

184. From at least as early as May 2011 through at least May 2014], Spartan Securities and Eldred knowingly or recklessly provided substantial assistance to Daniels, Fan and Harrison's violations of Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c), and are deemed to be in violation of these provisions to the same extent as Daniels, Fan and Harrison.

(Against Spartan Securities, Island Stock Transfer, and Dilley – Mirman/Rose Companies)

185. From at least as early as January 2009 through at least July 2014, Mirman and Rose, directly and indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, knowingly or recklessly engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person in connection with the purchase or sale of securities, and by reason of the foregoing, violated Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c).

186. From at least as early as December 2009 through at least July 2014], Spartan Securities, Island Stock Transfer, and Dilley knowingly or recklessly provided substantial assistance to Mirman and Rose's violations of Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c), and are deemed to be in violation of these provisions to the same extent as Mirman and Rose.

187. By reason of the foregoing, Spartan Securities, Island Stock Transfer, Dilley and Eldred aided and abetted and, unless enjoined, are reasonably likely to continue to aid and

abet, violations of Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c).

COUNT XIV

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

(Against Spartan Securities, Island Stock Transfer, and Dilley)

188. The Commission repeats and realleges Paragraphs 1 through 122 of its Complaint.

189. From at least as early as December 2009 until at least July 2014, Spartan Securities, Island Stock Transfer and Dilley, directly or indirectly, have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, when no registration statement was in effect with the Commission as to such securities, and have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell such securities when no registration statement had been filed with the Commission as to such securities.

190. There were no applicable exemptions from registration.

191. By reason of the foregoing, Spartan Securities, Island Stock Transfer and Dilley violated, and unless enjoined, are reasonably likely to continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. § 77e(a), (c).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court find the Defendants committed the violations alleged, and:

I.

Permanent Injunction

Issue a Permanent Injunction restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating the federal securities laws alleged in this Complaint.

II.

Disgorgement

Issue an Order directing Island Stock Transfer to disgorge ill-gotten gains received within the applicable statute of limitations (including the time during which the statute of limitations was tolled by agreement with Island Stock Transfer), including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

III.

Penalties

Issue an Order directing Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

IV.

Penny Stock Bar

Issue an Order, pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6), barring Spartan Securities, Dilley, Eldred and Lopez from participating in any future offering of a penny stock.

V.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

VI.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action and over Defendants in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: February 20, 2019

By:s/Wilfredo Fernandez
Wilfredo Fernandez
Senior Trial Counsel
Fla. Bar No. 142859
Telephone: (305) 982-6376
Facsimile: (305) 536-4154
E-mail: fernandezw@sec.gov

Christine Nestor
Senior Trial Counsel
Fla. Bar No. 597211
Telephone: (305) 982-6367
Facsimile: (305) 536-4154
E-mail: nestorc@sec.gov

ATTORNEYS FOR PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6300

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Wilfredo Fernandez, Esq., Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131, 305-982-6376

DEFENDANTS

SPARTAN SECURITIES GROUP, LTD., ISLAND CAPITAL MANAGEMENT LLC, CARL E. DILLEY, MICAH J. ELDRED and DAVID D. LOPEZ

County of Residence of First Listed Defendant PINELLAS
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

Alan M. Wolper, Esq., Ulmer & Berne LLP, 500 W. Madison Street, Suite 3600, Chicago, Illinois 60661-4587

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☒ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15USC§77q(a)(1-3);15USC§78i(b) and 17 CFR§240.10b-5(a-c);15USC§78i(a)(1-2);15USC§77e(a)(c) & others

Brief description of cause:
antifraud, registration and reporting provision of federal securities laws

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE Steven D. Merryday DOCKET NUMBER 8:18-CV-1003

DATE
2/20/2019

SIGNATURE OF ATTORNEY OF RECORD
[redacted]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

OS Received 04/14/2023

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

SECURITIES AND EXCHANGE COMMISSION *Plaintiff(s)* v. SPARTAN SECURITIES GROUP, LTD., ISLAND CAPITAL MANAGEMENT LLC, CARL E. DILLEY, MICAH J. ELDRED and DAVID D. LOPEZ *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Spartan Securities Group, LTD.
c/o Registered Agent: Christine Zitman
15500 Roosevelt Blvd.
Suite 303
Clearwater, Fl. 33760

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Wilfredo Fernandez, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

SECURITIES AND EXCHANGE COMMISSION *Plaintiff(s)* v. SPARTAN SECURITIES GROUP, LTD., ISLAND CAPITAL MANAGEMENT LLC, CARL E. DILLEY, MICAH J. ELDRED and DAVID D. LOPEZ *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Island Capital Managment, LLC
c/o Registered Agent: Christine Zitman
15500 Roosevelt Boulevard, Suite 303
Clearwater, FL 33760

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Wilfredo Fernandez, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

SECURITIES AND EXCHANGE COMMISSION

Plaintiff(s)

v.

SPARTAN SECURITIES GROUP, LTD., ISLAND CAPITAL MANAGEMENT LLC, CARL E. DILLEY, MICAH J. ELDRED and DAVID D. LOPEZ

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Carl E. Dilley

[redacted]

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Wilfredo Fernandez, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

SECURITIES AND EXCHANGE COMMISSION *Plaintiff(s)* v. SPARTAN SECURITIES GROUP, LTD., ISLAND CAPITAL MANAGEMENT LLC, CARL E. DILLEY, MICAH J. ELDRED and DAVID D. LOPEZ *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* David D. Lopez
[redacted]

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Wilfredo Fernandez, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

SECURITIES AND EXCHANGE COMMISSION *Plaintiff(s)* v. SPARTAN SECURITIES GROUP, LTD., ISLAND CAPITAL MANAGEMENT LLC, CARL E. DILLEY, MICAH J. ELDRED and DAVID D. LOPEZ *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Micah J. Eldred
[redacted]

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Wilfredo Fernandez, Esq.
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

ATTACHMENT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 8:19-cv-448-VMC-CPT

SPARTAN SECURITIES GROUP, LTD,
ISLAND CAPITAL MANAGEMENT,
CARL DILLEY, MICAH ELDRED, and
DAVID LOPEZ,

Defendants.

_____/

COURT'S INSTRUCTIONS TO THE JURY

INSTRUCTION 1

Members of the jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. When I have finished you will go to the jury room and begin your discussions, sometimes called deliberations.

INSTRUCTION 2

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it — even if you do not agree with the law — and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

The fact that a corporation is involved as a party must not affect your decision in any way. A corporation and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a corporation is involved, of course, it may act only through people as its employees; and, in general, a corporation is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the company.

INSTRUCTION 3

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

The fact that a governmental entity or agency is involved as a party must not affect your decision in any way. A governmental agency and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a governmental agency is involved, of course, it may act only through people as its employees; and, in general, a governmental agency is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the governmental agency.

INSTRUCTION 4

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

INSTRUCTION 5

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

(1) Did the witness impress you as one who was telling the truth?
(2) Did the witness have any particular reason not to tell the truth?
(3) Did the witness have a personal interest in the outcome of the case?
(4) Did the witness seem to have a good memory?
(5) Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
(6) Did the witness appear to understand the questions clearly and answer them directly?
(7) Did the witness's testimony differ from other testimony or other evidence?

INSTRUCTION 6

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

INSTRUCTION 7

It is proper for a lawyer to meet with any witness in preparation for trial.

INSTRUCTION 8

When scientific, technical, or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

INSTRUCTION 9

During the trial, you were presented a deposition by a video or by reading the transcript. A deposition is a witness's sworn testimony that is taken before the trial. During a deposition, the witness is under oath and swears to tell the truth, and the lawyers for each party may ask questions. A court reporter is present and records the questions and answers.

The depositions of Carl Dilley, taken on July 20, 2020; David Lopez, taken on July 27, 2020; Micah Eldred, taken on July 17, 2020, and the sworn testimony of Carl Dilley, taken on October 17, 2017; David Lopez, taken on October 18, 2017 and May 9, 2018; and Micah Eldred, taken on October 17, 2017 have been presented to you by reading the transcript. Deposition testimony is entitled to the same consideration as live testimony, and you must judge it in the same way as if the witness was testifying in court.

Do not place any significance on the behavior or tone of voice of any person who read the questions or answers.

INSTRUCTION 10

Sometimes the parties have agreed that certain facts are true. This agreement is called a stipulation. You must treat these facts as proved for this case. The parties have stipulated to the following facts:

1. During the time relevant to this case, Spartan Securities Group, LTD ("Spartan") was registered with the SEC as a broker-dealer and Island Capital Management LLC ("Island") was registered with the SEC as a transfer agent.
2. Spartan and Island share certain office space, computer systems, officers, and employees.
3. Carl Dilley was a registered principal of Spartan and the President of Island.
4. Micah Eldred was a registered principal of Spartan and the Chief Executive Officer of Island.
5. In 2007, Alvin Mirman consented to being barred by FINRA from association with any FINRA member.
6. In 2016, both Alvin Mirman and Sheldon Rose pled guilty to criminal charges of conspiracy to commit securities fraud in connection with their respective participation in fraudulent schemes. Mirman pled guilty to conspiracy to commit securities fraud concerning 10 companies at issue in this case. Rose pled guilty to conspiracy to commit securities fraud concerning 14 companies at issue in this case.
7. In 2018, the SEC brought suit against Michael Daniels and Diane Harrison, husband and wife, alleging they manufactured and made misrepresentations related to at least five undisclosed blank check companies at issue in this case. As a result of the SEC

action, Daniels and Harrison consented to a Judgment but neither admitted nor denied the SEC's allegations.

8. In 2018, the SEC entered, by consent, a cease-and-desist order, officer and director bar and penny stock bar against Andy Fan, and ordered him to pay a civil money penalty of $140,000. Fan consented to the order but neither admitted nor denied the factual assertions made by the SEC. The SEC's action related to Fan's conduct with respect to certain of the companies at issue in this case.

9. Spartan's written procedures list a number of red flags, including if Spartan "receives substantially similar offering documents from different issuers with" the same attorney, officers, directors, and/or shareholders because "[i]t is not uncommon for the same individuals to be involved in multiple microcap frauds."

10. Spartan's written policies (which incorporates verbatim SEC Release No. 34-41110, 1999 WL 95487) expressly state: "If [Spartan] realizes after reviewing the information for several issuers that the same individuals are involved with these entities, [Spartan] should make further inquiries to determine whether it has a reasonable basis to believe that the issuer information is accurate." Another red flag is the "transfer of shares by control persons, as gifts, to third persons in order to help create a public market."

11. Spartan would gather a series of documents for Form 211 applications. Spartan gathered what it deemed to be appropriate information, and prepared a Form 211 application related to the issuer. A registered representative would compile the documents, review them, and sign the 211 application.

12. Mirman and/or Rose recruited a sole officer, director, employee, and majority shareholder (the "sole officer") to act as CEO in name only for 14 companies at issue in this case. Mirman and/or Rose also prepared false and misleading registration statements (the "Forms S-1") and subsequent SEC filings which falsely depicted the issuers as actively pursuing a variety of business plans, when the only plan from the onset was for the company to be sold as public vehicles.
13. The Forms S-1 were effective for Kids Germ, Obscene Jeans, On the Move, Rainbow Coral, First Titan, Neutra, Aristocrat, First Social, Global Group, E-Waste Corp., First independence, Envoy Group, Changing Technologies, and First Xeris.
14. The Forms S-1 for the companies had similar disclosures including number of shares issued, offering sizes, capitalization structures, assets, and operating budgets.
15. Spartan filed Forms 211 applications with FINRA to initiate quotations in the common stock of the following 19 companies: Kids Germ, Obscene Jeans, On the Move, Rainbow Coral, First Titan, Neutra, Aristocrat, First Social, Global, E-Waste, First Independence, Changing Tech, First Xeris, Envoy Group, Dinello, Court Document, Wallbeds, Top to Bottom, and PurpleReal.
16. Dilley signed the Forms 211 for 15 companies at issue in this case. Eldred signed the Forms 211 for 4 companies at issue in this case.
17. After submission of the Forms 211, FINRA examiners requested information from Spartan in deficiency letters for the companies at issue. FINRA examiners were trained to look for SEC "red flags." FINRA examiners could seek additional information

concerning the application in a deficiency letter. Broker-dealers were expected to respond to deficiency letters.

18. Spartan's computer network maintains a specific Form 211 file folder organized by issuer. Spartan had registration statements and shareholder lists for issuers in its files.

19. Daniels and Harrison have been friends with Eldred for at least 10 years. Harrison and Eldred's wife had each been the sole officer of an issuer that was later acquired. Eldred was aware that Daniels and Harrison, through Daniels's law practice, were active in the reverse merger business and had consummated a number of reverse mergers prior for clients who wanted to enter the public market.

20. Mirman and Rose forwarded documents involved with the Form 211 process as requested by Spartan. Diane Harrison and her husband, Michael Daniels, requested Spartan file Form 211 applications for five issuers—Dinello, Court, Quality Wallbeds, Top to Bottom, and PurpleReal.

21. FINRA examiners reviewed all the Form 211 applications for the 19 issuers. FINRA issued comment letters for each but cleared for quotation all the issuers except PurpleReal. The SEC obtained a stop order against PurpleReal.

22. After an issuer was cleared for quotation, Spartan acted as the exclusive market-maker for the issuer for 30 days.

23. Each Daniels/Harrison Company had an overlapping shareholder roster (up to 26 of 29 of the same shareholders).

24. Island served as the transfer agent for the following 16 companies: Kids Germ, Obscene Jeans, On the Move, Rainbow Coral, First Titan, Neutra, Aristocrat, First

Social, Global, E-Waste, First Independence, Changing Tech, Dinello, Court Document, Wallbeds, and Top to Bottom.

25. According to Island's policies and procedures, all transfer records and shareholder lists are the "highly confidential" property of the issuer, and "shall not be given to unauthorized parties under any circumstances." Moreover, Island's policies and procedures stated that "[s]hareholders may inquire about shares they own personally, but may not be provided with information concerning any other shareholder."

26. Island's policies and procedures provided that shares without restrictive legend "can NOT be issued in the name of an insider". Island Stock Transfer training materials reiterated that "Insiders ALWAYS have restricted stock" (emphasis in original).

27. DTC held stock certificates in trust for eligible issuers to facilitate easier transfers of securities.

28. In 2012, SEC examiners conducted an on-site examination of Spartan. SEC examined Island during the same period as Spartan. Examiners requested records for Aristocrat, First Titan and Neutra.

INSTRUCTION 11

Certain exhibits in the form of charts, summaries, calculations and the like have been received in evidence. Such exhibits are received in evidence where voluminous writings, documents, and records are involved. These exhibits are available for your assistance and convenience in considering the evidence. But that does not mean you must accept any chart, summary, or calculation. As with any other evidence, you must decide for yourself whether to rely upon them.

INSTRUCTION 12

In this case it is the responsibility of the SEC to prove every essential part of its claims by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that the SEC's claims are more likely true than not true.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the SEC.

When more than one claim is involved, you should consider each claim separately.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of the SEC's claims by a preponderance of the evidence, you should find for Spartan, Island, Dilley, Eldred, or Lopez as to that claim.

INSTRUCTION 13

In this case, the SEC brings fourteen (14) claims, or counts. Count I is brought under Section 15(c)(2) and Rule 15c2-11 of the Exchange Act against Spartan. Count II is brought against Dilley, Eldred, and Lopez for aiding and abetting Spartan's violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act. Counts III and IV are brought under Sections 17(a)(1) and 17(a)(3), respectively, of the Securities Act of 1933 against Spartan, Island, Dilley, and Eldred. Counts V, VI, and VII are brought under Section 10(b) of the Exchange Act and Exchange Act Rules 10b-5(a), 10b-5(b), and 10b-5(c) against Spartan, Island, Dilley, and Eldred. Counts VIII, IX, and X are brought against Spartan, Island, Dilley, and Eldred for aiding and abetting violations of Section 17(a)(1), (2), and (3) of the Securities Act of 1933 by Alvin Mirman ("Mirman"), Sheldon Rose ("Rose"), Michael Daniels ("Daniels"), Andy Fan ("Fan"), or Diane Harrison ("Harrison"). Counts XI, XII, and XIII are brought against Spartan, Island, Dilley, and Eldred for aiding and abetting violations of Section 10(b) and Rule 10b-5(a), (b), and (c) of the Exchange Act by Mirman, Rose, Daniels, Fan, or Harrison. Count XIV is brought against Spartan, Island, and Dilley under Sections 5(a) and 5(c) of the Securities Act of 1933.

If you find the SEC has proved one or more of its claims against one or more of the Defendants, I alone will determine the remedy or remedies to impose at a later date.

INSTRUCTION 14

In Count I, the SEC claims that Spartan violated Section 15(c)(2) and Rule 15c2-11 of the Securities and Exchange Act of 1934.

The Exchange Act is a federal statute that allows the SEC to enact rules and regulations prohibiting certain conduct in the purchase or sale of securities.

Section 15(c)(2)(A) of the Exchange Act prohibits broker-dealers from inducing or attempting to induce the purchase or sale of any security by means of any fraudulent, deceptive, or manipulative act or practice, or making any fictitious quotation.

Rule 15c2-11, requires broker-dealers, before initiating a quoted market in an issuer's security, to obtain specific documents and information about the issuer. Spartan acquired the relevant documents and information about the issuer.

This information must be reviewed together with any other material information (including adverse information) regarding the issuer which came to Spartan's knowledge or possession before the publication or submission of the quotation.

To prove a claim under Section 15(c)(2) and Rule 15c2-11 of the Securities and Exchange Act of 1934, the SEC must prove each of the following facts by a preponderance of the evidence:

(i) Spartan was a broker or dealer; and

(ii) Spartan published a quotation for a security or, directly or indirectly, submitted a quotation for publication, in any quotation medium; and

(iii) Based upon a review of the documents and information specified in the rule, including any adverse information in its possession, Spartan lacked a reasonable basis under the circumstances for believing that:

i. The documents and information specified in the rule were accurate in all material respects, and

ii. The sources of the documents and information specified in the rule were reliable.

In general, a corporation is responsible under the law for the acts and statements of its employees that are made within the scope of their duties as employees of the company.

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INSTRUCTION 15

In Count II, the SEC claims that Carl E. Dilley, Micah J. Eldred, and David D. Lopez aided and abetted Spartan's violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act.

Dilley, Eldred, and Lopez may be liable for these violations – even if they personally did not commit the violations – if you find that they aided and abetted someone else (such as Spartan) who committed the violations.

To prove this claim, the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that, Spartan violated Section 15(c)(2) and Rule 15c2-11 of the Exchange Act;

Second, you must find that Dilley, Eldred, and Lopez were aware that they were part of an overall activity that was improper; and

Third, you must find that Dilley, Eldred, and Lopez knowingly and substantially assisted Spartan's violations of Section 15(c)(2) and Rule 15c2-11 of the Exchange Act.

The first element requires the SEC to prove that Spartan violated Section 15(c)(2) and Rule 15c2-11 of the Exchange Act. The SEC's allegations in this count are identical to its allegations against Spartan in Count I. Therefore, your decision on Count I as to Spartan will determine your decision as to Spartan in this Count.

The second element requires the SEC to prove that Dilley, Eldred, and Lopez were aware that they were part of an overall activity that was improper. To prove awareness, the SEC must prove that Dilley, Eldred, and Lopez knew or were severely reckless in not knowing that they were part of an overall improper activity.

For the purposes of this Count, the term "knowingly" means that Dilley, Eldred, and Lopez acted with the intent to participate in an overall improper activity. A person does not act knowingly if he acted inadvertently, carelessly, or by mistake.

For the purposes of this Count, to act with "severe recklessness" means to engage in conduct that involves an extreme departure from the standard of ordinary care. A person acts with reckless disregard if it is obvious that an ordinary person under the circumstances would have realized that he was participating in an overall improper activity.

The SEC may prove any of the Defendants acted knowingly or severely recklessly by proving, by a preponderance of the evidence, that a Defendant deliberately closed his eyes to what would otherwise have been obvious to him. No one can avoid liability under the securities laws by deliberately ignoring what is obvious. If a Defendant has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge. You may infer knowledge of the existence of a fact if a Defendant (1) subjectively believed that there is a high probability that a fact exists and (2) took deliberate actions to avoid learning that fact. If you find by a preponderance of the evidence that a Defendant intentionally avoided knowledge or enlightenment, you may find that Defendant acted knowingly or severely recklessly.

As to the third element, the term "substantial assistance" means that, when based upon all of the circumstances surrounding the conduct in question, Dilley, Eldred, and Lopez's actions were a substantial causal factor in bringing about Spartan's violations of Section 15(c)(2) and Rule 15c2-11.

INSTRUCTION 16

In Count III, the SEC claims that Spartan, Island, Dilley, and Eldred violated Section 17(a)(1) of the Securities Act of 1933.

The Securities Act is a federal statute prohibiting certain conduct in the offer or sale of securities. Section 17(a)(1) makes it unlawful for a person to employ any device, scheme, or artifice to defraud in connection with the offer or sale of any security.

A "security" is an investment in a commercial, financial, or other business enterprise with the expectation that profits or other gain will be produced by others. Some common types of securities are stocks, bonds, debentures, warrants, and investment contracts.

To prove a claim under Section 17(a)(1) of the Securities Act, the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that Spartan, Island, Dilley, or Eldred used an instrumentality of interstate commerce in connection with the offer to sell or sale of a security.

Second, you must find that Spartan, Island, Dilley, or Eldred used a device, scheme, or artifice to defraud someone in connection with the offer to sell or sale of a security.

And third, you must find that Spartan, Island, Dilley, or Eldred acted knowingly or with severe recklessness.

Now I'll provide you with some additional instructions to help you as you consider the facts the SEC must prove.

For the first element – that an instrumentality of interstate commerce was used in connection with the offer to sell or sale of a security – you must use these definitions:

"Instrumentality of interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, an interstate delivery system such as Federal Express or UPS or a facility of a national securities exchange such as the New York Stock Exchange or NASDAQ or an inter-dealer electronic-quotation-and-trading system in the over-the-counter securities market. It's not necessary that the facility of a national securities exchange was the means by which Spartan, Island, Dilley, or Eldred used a device, scheme, or artifice to defraud someone. It's only necessary that the facility was used in some phase of the transaction.

The terms "sale" or "sell" mean the transfer of a security for value. This includes the contract for sale for value or any other disposition for value of a security or interest in a security. An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

For the second element, the SEC must prove that Spartan, Island, Dilley, or Eldred used a device, scheme, or artifice to defraud in the offer to sell or sale of a security. The SEC does not need to identify any particular offer to sell or sale of securities by a specific person, including Spartan, Island, Dilley, or Eldred. Rather, it's enough if the SEC proves that the device, scheme, or artifice to defraud Spartan, Island, Dilley, or Eldred used or employed involved, or touched in any way, the offer to sell or sale of securities.

The SEC has alleged that Spartan, Island, Dilley, or Eldred violated Section 17(a) of the Securities Act when Dilley schemed with Mirman and Rose, and Eldred schemed with Daniels, Fan and Harrison, to defraud the public that the Mirman/Rose Companies and Daniels/Harrison/Fan Companies were operating businesses with independent management and shareholders, rather than undisclosed "blank check" or "shell" companies for sale. The SEC

contends that in furtherance of the Mirman/Rose scheme, Spartan and Dilley signed and submitted false Form 211 applications to FINRA; Spartan, Island and Dilley contributed to false DTC applications; Dilley found potential shell buyers; Dilley and Island signed an escrow agreement and false attestation letters for shell buyers; and Dilley and Island effectuated the bulk transfer of the entire deceptive public float of Mirman/Rose Companies to shell buyers. The SEC alleges that Spartan and Eldred similarly schemed with Daniels, Harrison, and Fan by filing false Forms 211 with FINRA, all in support of the manufacture of undisclosed blank check companies – one of which Eldred expressly proposed to acquire himself while its Form 211 was pending.

The SEC claims that Spartan Securities and Island Stock Transfer provided various services which were critical to the Mirman/Rose and Daniels/Harrison/Fan shell factories, including filing a Form 211 application with FINRA to demonstrate compliance with Rule 15c2-11. Finally, the SEC contends that Spartan, Dilley and Eldred Securities also had information that undermined any reasonable basis that the information required by Rule 15c2-11 was materially accurate and from a reliable source.

A "scheme" is a design or plan formed to accomplish some purpose. A "device," when used in an unfavorable sense, is a "trick" or "fraud." Put another way, the term "device, scheme, or artifice to defraud" would refer to any plan or course of action that involves (1) false or fraudulent pretenses, (2) untrue statements of material facts, (3) omissions of material facts, or (4) representations, promises, and patterns of conduct calculated to deceive.

A "misrepresentation" is a statement that is not true. An "omission" is the failure to state facts that would be necessary to make the statements made by the Defendants not misleading to the Plaintiff.

A misstatement or omission of fact is "material" if there is a substantial likelihood that a reasonable investor would attach importance to the misrepresented or omitted fact in determining his course of action. Put another way, there must be a substantial likelihood that a reasonable investor would view the misstated or omitted fact's disclosure as significantly altering the total mix of available information. A minor or trivial detail is not a "material fact."

For the third element, the SEC must prove that Spartan, Island, Dilley, or Eldred acted knowingly or with severe recklessness. The term "knowingly" means that Spartan, Island, Dilley, or Eldred acted with an intent to deceive, manipulate, or defraud. But Spartan, Island, Dilley, or Eldred didn't act knowingly if they acted inadvertently, carelessly, or by mistake.

To act with "severe recklessness" means to engage in conduct that involves an extreme departure from the standard of ordinary care. A person acts with reckless disregard if it's obvious that an ordinary person under the circumstances would have realized the danger and taken care to avoid the harm likely to follow.

The SEC may prove any of the Defendants acted knowingly or severely recklessly by proving, by a preponderance of the evidence, that a Defendant deliberately closed his eyes to what would otherwise have been obvious to him. No one can avoid liability under the securities laws by deliberately ignoring what is obvious. If a Defendant has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge. You may infer knowledge of the existence of a fact if a Defendant

(1) subjectively believed that there is a high probability that a fact exists and (2) took deliberate actions to avoid learning that fact. If you find by a preponderance of the evidence that a Defendant intentionally avoided knowledge or enlightenment, you may find that Defendant acted knowingly or severely recklessly.

If you find that the SEC has proved one or more of its claims against Defendants, I alone will determine the remedy or remedies to be imposed later.

INSTRUCTION 17

In Count IV, the SEC claims that Spartan, Island, Dilley, and Eldred violated Section 17(a)(3) of the Securities Act of 1933. Section 17(a)(3) makes it unlawful for a person, in connection with the offer or sale of a security, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

To prove a claim under Section 17(a)(3), the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that Spartan, Island, Dilley, or Eldred used an instrumentality of interstate commerce in connection with the offer to sell or sale of the security.

Second, you must find that Spartan, Island, Dilley, or Eldred engaged in a transaction, practice, or course of business, in connection with the offer to sell or sale of a security, that operated or would operate as a fraud or deceit upon a purchaser; and

Third, you must find that Spartan, Island, Dilley, or Eldred acted negligently. Now I will provide you with some additional instructions to help you as you consider the facts the SEC must prove.

For the first element, the same definition of the terms "instrumentality of interstate commerce," "sale," "sell," "offer to sell," or "offer for sale" that I gave regarding Count III apply here.

For the second element, the SEC must prove that Spartan, Island, Dilley, or Eldred engaged in any act, practice, or course of business, in connection with the offer to sell or sale of a security, that operated or would operate as a fraud or deceit upon the purchaser.

The SEC does not need to identify any particular offer to sell or sale of securities by a specific person, including Spartan, Island, Dilley, or Eldred. Rather, it's enough if the SEC proves that the act, practice, or course of business that Spartan, Island, Dilley, or Eldred engaged in involved, or touched in any way, the offer to sell or sale of securities.

A "fraud or deceit" means a lie or a trick.

A fraud or deceit doesn't have to relate to an investment's quality or actually result in the purchase or sale of any security. It is not necessary that Spartan, Island, Dilley, or Eldred, who were allegedly involved in the fraud or deceit, sold or purchased securities personally if the fraudulent or deceitful conduct defrauded some person.

The term "would" in the phrase "would operate as a fraud or deceit" means that the act, practice, or course of business had the capacity to defraud a purchaser or seller. It's not necessary that the act, practice, or course of business actually defrauded someone.

The SEC has alleged that Spartan, Island, Dilley, or Eldred violated Section 17(a) of the Securities Act when Dilley schemed with Mirman and Rose, and Eldred schemed with Daniels, Fan and Harrison, to defraud the public that the Mirman/Rose Companies and Daniels/Harrison/Fan Companies were operating businesses with independent management and shareholders, rather than undisclosed "blank check" or "shell" companies for sale. The SEC contends that in furtherance of the Mirman/Rose scheme, Spartan and Dilley signed and submitted false Form 211 applications to FINRA; Spartan, Island and Dilley contributed to false DTC applications; Dilley found potential shell buyers; Dilley and Island signed an escrow agreement and false attestation letters for shell buyers; and Dilley and Island effectuated the bulk transfer of the entire deceptive public float of Mirman/Rose Companies to shell buyers. The

SEC alleges that Spartan and Eldred similarly schemed with Daniels, Harrison, and Fan by filing false Forms 211 with FINRA, all in support of the manufacture of undisclosed blank check companies – one of which Eldred expressly proposed to acquire himself while its Form 211 was pending.

The SEC claims that Spartan Securities and Island Stock Transfer provided various services which were critical to the Mirman/Rose and Daniels/Harrison/Fan shell factories, including filing a Form 211 application with FINRA to demonstrate compliance with Rule 15c2-11. Finally, the SEC contends that Spartan, Dilley and Eldred Securities also had information that undermined any reasonable basis that the information required by Rule 15c2-11 was materially accurate and from a reliable source.

For the third element as to Section 17(a)(3), the SEC must prove Spartan, Island, Dilley, or Eldred were negligent in in engaging in the act, practice, or course of business. "Negligence" is the failure to exercise the due diligence, care, or competence that a reasonable person would when making representations or engaging in an act, practice, or course of business. Ask yourself: Would a reasonable person have omitted or made the statements or engaged in the act, practice, or course of business?

INSTRUCTION 18

In Counts VIII, IX, and X, the SEC asserts that Spartan, Island, Dilley, and Eldred aided and abetted violations of Section 17(a)(1), (2), and (3) of the Securities Act of 1933 by Alvin Mirman ("Mirman"), Sheldon Rose ("Rose"), Michael Daniels ("Daniels"), Andy Fan ("Fan") or Diane Harrison ("Harrison"). Spartan, Island, Dilley, and Eldred may be liable for these violations – even if they personally did not commit the violations – if you find that they aided and abetted someone else who committed the violations. To prove this claim, the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that Mirman, Rose, Daniels, Fan, or Harrison violated Section 17(a)(1) , (2), or (3) of the Securities Act;

Second, you must find that Spartan, Island, Dilley, or Eldred were aware that they were part of an overall activity that was improper; and

Third, you must find that Spartan, Island, Dilley, or Eldred knowingly and substantially assisted Mirman, Rose, Daniels, Fan, or Harrison's violations of Section 17(a)(1), (2), or (3) of the Securities Act.

You should use the instructions and definitions on aiding and abetting that I gave you regarding Count II and knowingly that I gave you regarding Count III.

To determine whether Mirman, Rose, Daniels, Fan, or Harrison violated Section 17(a)(1), you should use the elements and definitions I gave you regarding Count III.

To determine whether Mirman, Rose, Daniels, Fan, or Harrison violated Section 17(a)(2), you should use the following instructions:

First, you must find that Mirman, Rose, Daniels, Fan, or Harrison used an instrumentality of interstate commerce in connection with the offer to sell or sale of a security.

Second, you must find that Mirman, Rose, Daniels, Fan, or Harrison directly or indirectly made one or more misrepresentations of material fact or omissions of material fact in the offer to sell or sale of a security.

And third, you must find that Mirman, Rose, Daniels, Fan, or Harrison was negligent in making the representation.

Now I'll provide you with some additional instructions to help you as you consider the facts the SEC must prove.

For the first element – that an instrumentality of interstate commerce was used in connection with the offer to sell or sale of a security – you must use these definitions:

"Instrumentality of interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, an interstate delivery system such as Federal Express or UPS or a facility of a national securities exchange such as the New York Stock Exchange or NASDAQ or an inter-dealer electronic-quotation-and-trading system in the over-the-counter securities market. It's not necessary that the facility of a national securities exchange was the means by which Spartan, Island, Dilley, or Eldred used a device, scheme, or artifice to defraud someone. It's only necessary that the facility was used in some phase of the transaction.

The terms "sale" or "sell" mean the transfer of a security for value. This includes the contract for sale for value or any other disposition for value of a security or interest in a security. An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

For the second element, the SEC must prove that someone made a misrepresentation of material fact or an omission of material fact.

The SEC claims that Mirman, Rose, Daniels, Fan, or Harrison are responsible for the following misrepresentations of fact or omissions. The SEC allege that Rose and Mirman recruited persons to act as straw CEOs, to fraudulently obtain the effective registration of shell companies with the SEC, through the use of false and fraudulent statements and documents that were submitted to the SEC for this purpose. The SEC contends that a further purpose of the scheme was to issue unrestricted stock for these companies that could be secretly controlled by them. This was allegedly done so that Rose and Mirman would be in a position to control all or nearly all of the publicly traded shares of the companies, so that when they later sold a shell company, part of the sale would include the undisclosed transfer of the unrestricted free trading shares to the purchaser. In this way, the purchaser of the shell company would be in a position to engage in fraudulent schemes, such as "pump and dump" stock swindles.

The SEC further alleges that Daniels, Fan, and Harrison manufactured undisclosed blank check companies based on a deceptive public float of purportedly unrestricted shares. Harrison and her husband, Daniels, allegedly manufactured at least five public companies. The Form 211s, including the responses to FINRA's deficiency letters, contained misrepresentations with respect to the management, business purpose, and shareholders to give the false appearance of an operating company with a specific business plan (i.e. no plans to seek a merger or acquisition), independent management and an independent shareholder base. The SEC contends that Daniels and Harrison sold their first company to Fan as part of his endeavor to amass a roster of public

companies for later reverse mergers with Chinese companies. Daniels and Fan then allegedly agreed to create three more public vehicles from scratch.

Finally, the SEC claims that Rose and Mirman and Daniels, Fan, and Harrison obtained money or property by means of the above untrue statements of a material fact or omissions to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

A "misrepresentation" is a statement that is not true. An "omission" is the failure to state facts that would be necessary to make the statements made by the Defendants not misleading to the Plaintiff.

A misstatement or omission of fact is "material" if there is a substantial likelihood that a reasonable investor would attach importance to the misrepresented or omitted fact in determining his course of action. Put another way, there must be a substantial likelihood that a reasonable investor would view the misstated or omitted fact's disclosure as significantly altering the total mix of available information. A minor or trivial detail is not a "material fact."

If Mirman, Rose, Daniels, Fan, or Harrison have made false or inaccurate statements regarding material facts before, such as statements made in reports they filed with the Securities Exchange Commission, information they sent to investors, or statements they made in press releases, they have a duty to correct those statements if it is discovered later that those statements weren't true when made and they remain material to a shareholder's investment decision.

For the third element, the SEC must prove that Mirman, Rose, Daniels, Fan, or Harrison was negligent in making materially false or misleading statements or omissions in connection

with the offer to sell or sale of a security. "Negligence" is the failure to exercise the due diligence, care, or competence that a reasonable person would when making representations or engaging in an act, practice, or course of business. Ask yourself: Would a reasonable person have omitted or made the statements or engaged in the act, practice, or course of business?

To find for the SEC, you need only find that Mirman, Rose, Daniels, Fan, or Harrison obtained money or property by means of any one of the misrepresentations or omissions. You need not find that Mirman, Rose, Daniels, Fan, or Harrison obtained money or property by means of all of the misrepresentations or omissions.

To determine whether Mirman, Rose, Daniels, Fan, or Harrison violated Section 17(a)(3), you should use the elements I gave you regarding Count IV.

INSTRUCTION 19

In Counts V, VI, and VII, the SEC claims that Spartan, Island, Dilley, and Eldred violated Section 10(b) of the Exchange Act and Exchange Act Rules 10b-5(a), 10b-5(b), and 10b-5(c). Rule 10b-5(a) makes it unlawful for a person to employ any device, scheme, or artifice to defraud someone else in connection with the purchase or sale of any security. Rule 10b-5(b) makes it unlawful for a person to commit a fraud in connection with the purchase or sale of a security. Rule 10b-5(c) makes it unlawful for a person to engage in any practice or course of dealing that would operate as a fraud in connection with the purchase or sale of any security.

The SEC may bring a civil action for a violation of Rule 10b-5(a), (b), and (c). To prove a claim under Rule 10b-5(a), (b), and (c), the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that Spartan, Island, Dilley, or Eldred used an instrumentality of interstate commerce in connection with the purchase or sale of a security.

Second, you must find that Spartan, Island, Dilley, or Eldred used a device, scheme, or artifice to defraud someone in connection with the purchase or sale of a security; or made a misrepresentation of a material fact, or omitted a material fact, in connection with the purchase or sale of a security; or engaged in an act, practice, or course of business in connection with the purchase or sale of a security that operated or would operate as a fraud or deceit on any person.

Third, you must find that Spartan, Island, Dilley, or Eldred acted knowingly or with severe recklessness.

For the first element, the terms "instrumentality of interstate commerce," "sale," "sell," "offer to sell," or "offer for sale" mean the same thing as I previously explained for Counts III and IV.

For the second element, the SEC alleges that Spartan, Island, Dilley, and Eldred violated three portions of Rule 10b-5. It is not necessary that the SEC prove that Spartan, Island, Dilley, and Eldred violated all three portions of the Rule. However, you must be unanimous as to which portion of the Rule, if any, each Defendant violated. I will now discuss the requirements of each portion of the Rule separately.

1) Rule 10b-5(a)

To prove its claim under Rule 10b-5(a), the SEC must prove that Spartan, Island, Dilley, or Eldred used a device, scheme, or artifice to defraud in connection with the purchase or sale of a security. The SEC does not need to identify any particular purchase or sale of securities by a specific person, including Spartan, Island, Dilley, and Eldred. Rather, it's enough if the SEC proves that the device, scheme, or artifice to defraud used by Spartan, Island, Dilley, or Eldred involved, or touched in any way, the purchase or sale of securities.

The SEC claims that Spartan, Island, Dilley, or Eldred violated Section 10(b) and Rule 10b-5(a) when Dilley schemed with Mirman and Rose, and Eldred schemed with Daniels, Fan and Harrison, to defraud the public that the Mirman/Rose Companies and Daniels/Harrison/Fan Companies were operating businesses with independent management and shareholders, rather than undisclosed "blank check" or "shell" companies for sale. The SEC alleges that in furtherance of the Mirman/Rose scheme, Spartan and Dilley signed and submitted false Form 211 applications to FINRA; Spartan, Island and Dilley contributed to false DTC applications; Dilley

found potential shell buyers; Dilley and Island signed an escrow agreement and false attestation letters for shell buyers; and Dilley and Island effectuated the bulk transfer of the entire deceptive public float of Mirman/Rose Companies to shell buyers. The SEC further alleges that Spartan and Eldred similarly schemed with Daniels, Harrison, and Fan by filing false Forms 211 with FINRA, all in support of the manufacture of undisclosed blank check companies – one of which Eldred expressly proposed to acquire himself while its Form 211 was pending.

The SEC also alleges that Spartan Securities and Island Stock Transfer provided various services which were critical to the Mirman/Rose and Daniels/Harrison/Fan shell factories, including filing a Form 211 application with FINRA to demonstrate compliance with Rule 15c2-11. Finally, the SEC alleges that Spartan, Dilley and Eldred Securities also had information that undermined any reasonable basis that the information required by Rule 15c2-11 was materially accurate and from a reliable source.

The terms "scheme," "device," "misrepresentation," "omission," and "material" mean the same thing as I previously explained for Counts III and IV.

For purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.

2) Rule 10b-5(b)

To prove its claim under Rule 10b-5(b), the SEC must prove that Spartan, Island, Dilley, or Eldred either made an untrue statement of material fact or omitted a material fact, either of which would tend to mislead the prospective buyer or seller of a security.

The terms "misrepresentation," "omission," "material," mean the same thing as I previously explained in the instruction regarding Counts III and IV. For purposes of Rule 10b-5,

the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.

The SEC does not need to identify any particular purchase or sale of securities by a specific person, including Spartan, Island, Dilley, or Eldred. Rather, it's enough if the SEC proves that the misrepresentation or omission involved or touched any purchase or sale of a security in any way.

The SEC contends that Spartan, Island, Dilley, and Eldred made misrepresentations and omissions to, among others, FINRA, DTC participants, and securities purchasers. The SEC claims that Spartan, Dilley, and/or Eldred made misrepresentations and omissions in the filing of 15c2-11 applications and submissions, including, but not limited to:

- Alvin Mirman and Sheldon Rose's involvement and/or role in the issuers;
- Mirman and Rose's control of the issuers;
- Whether the issuers were shells or blank check companies;
- That the issuers had no consultants;
- The true business purpose of the issuers;
- Communications with CEOs/Presidents of the issuers;
- The relationships and affiliations among shareholders and Mirman and Rose;
- The solicitations of the shareholders;
- The issuers' plans for potential mergers or acquisitions;
- That the issuers' shareholders have control of their shares;
- That Spartan conducted due diligence on the issuers;
- Spartan and Island's relationship with Sheldon Rose and Alvin Mirman, Diane Harrison, Michael Daniels and Andy Fan;
- Michael Daniels, Diane Harrison, and Andy Fan's involvement in the issuers;
- Circumstances surrounding the Form 211 submissions, including the identity of the person for whom the quotation is being submitted;
- That there are no other issuers that the current officers or directors of the issuers have requested a listing quotation on;
- That there was no material information, including adverse information regarding the issuer that the firm is aware of or has in its possession.
- Spartan, Island, and Dilley initiated and provided false information for applications filed with the DTC, including misrepresenting the shell status of issuers.

- Island and Dilley made misrepresentations and omissions regarding the designation of the securities as free trading.
- Island and Dilley made misrepresentation and omissions when effectuating the bulk issuance and transfer of securities, including stock certificates without restrictive legends.

3) Rule 10b-5(c)

To prove its claim under Rule 10b-5(c), the SEC must prove that Spartan, Island, Dilley, or Eldred engaged in an act, practice, or course of business – in connection with the purchase or sale of a security – that operated or would operate as a fraud or deceit on any person. The SEC does not need to identify any particular purchase or sale of securities by a specific person, including Spartan, Island, Dilley, or Eldred. Rather, it's enough if the SEC proves that the act, practice, or course of business that Spartan, Island, Dilley, or Eldred engaged in involved, or touched in any way, the purchase or sale of securities.

A "fraud or deceit" means a lie or a trick. A fraud or deceit doesn't have to relate to an investment's quality or actually result in the purchase or sale of any security. It's not necessary that Spartan, Island, Dilley, or Eldred, who was allegedly involved in the fraud or deceit, sold or purchased securities personally if the fraudulent or deceitful conduct defrauded some person.

The term "would" in the phrase "would operate as a fraud or deceit" means that the act, practice, or course of business had the capacity to defraud a purchaser or seller. It's not necessary that the act, practice, or course of business actually defrauded someone.

The SEC claims that Spartan, Island, Dilley, or Eldred violated Section 10(b) and Rule 10b-5(c) when Dilley schemed with Mirman and Rose, and Eldred schemed with Daniels, Fan and Harrison, to defraud the public that the Mirman/Rose Companies and Daniels/Harrison/Fan Companies were operating businesses with independent management and shareholders, rather

than undisclosed "blank check" or "shell" companies for sale. The SEC alleges that in furtherance of the Mirman/Rose scheme, Spartan and Dilley signed and submitted false Form 211 applications to FINRA; Spartan, Island and Dilley contributed to false DTC applications; Dilley found potential shell buyers; Dilley and Island signed an escrow agreement and false attestation letters for shell buyers; and Dilley and Island effectuated the bulk transfer of the entire deceptive public float of Mirman/Rose Companies to shell buyers. The SEC further alleges that Spartan and Eldred similarly schemed with Daniels, Harrison, and Fan by filing false Forms 211 with FINRA, all in support of the manufacture of undisclosed blank check companies – one of which Eldred expressly proposed to acquire himself while its Form 211 was pending.

The SEC also alleges that Spartan Securities and Island Stock Transfer provided various services which were critical to the Mirman/Rose and Daniels/Harrison/Fan shell factories, including filing a Form 211 application with FINRA to demonstrate compliance with Rule 15c2-11. Finally, the SEC alleges that Spartan, Dilley and Eldred Securities also had information that undermined any reasonable basis that the information required by Rule 15c2-11 was materially accurate and from a reliable source.

For the third element, the SEC must prove that Spartan, Island, Dilley, or Eldred acted knowingly or with severe recklessness which I've defined in the instruction regarding Count III.

INSTRUCTION 20

In Counts XI, XII, XIII, the SEC asserts that Spartan, Island, Dilley, and Eldred aided and abetted violations of Section 10(b) and Rule 10b-5(a), (b), and (c) of the Exchange Act by Mirman, Rose, Daniels, Fan, or Harrison. Spartan, Island, Dilley and Eldred may be liable for these violations – even if they personally did not commit the violations – if you find that they aided and abetted someone else who committed the violations. To prove this claim, the SEC must prove each of the following facts by a preponderance of the evidence:

First, you must find that Mirman, Rose, Daniels, Fan, or Harrison violated Section 10(b) and Rule 10b-5(a), (b), or (c) of the Exchange Act;

Second, you must find that Spartan, Island, Dilley, or Eldred were aware that they were part of an overall activity that was improper; and

Third, you must find that Spartan, Island, Dilley, or Eldred knowingly and substantially assisted Mirman, Rose, Daniels, or Harrison's violations of Section 10(b) and Rule 10b-5(a), (b), or (c) of the Exchange Act.

To determine whether Mirman, Rose, Daniels, Fan, or Harrison violated Section 10(b) and Rule 10b-5, you should use the elements and definitions I gave you for Counts V, VI, and VII.

The SEC alleges that Mirman, Rose, Daniels, Fan, or Harrison engaged in the following conduct. The SEC claims that Rose and Mirman recruited persons to act as straw CEOs, to fraudulently obtain the effective registration of shell companies with the SEC, through the use of false and fraudulent statements and documents that were submitted to the SEC for this purpose. A further purpose of the alleged scheme was to issue unrestricted stock for these companies that could be secretly controlled by them. This was allegedly done so that Rose and Mirman would

be in a position to control all or nearly all of the publicly traded shares of the companies, so that when they later sold a shell company, part of the sale would include the undisclosed transfer of the unrestricted free trading shares to the purchaser. In this way, the purchaser of the shell company would be in a position to engage in fraudulent schemes, such as "pump and dump" stock swindles.

The SEC also alleges that Daniels, Fan, and Harrison manufactured undisclosed blank check companies based on a deceptive public float of purportedly unrestricted shares. The SEC claims that Harrison and her husband, Daniels, manufactured at least five public companies. The Form 211s, including the responses to FINRA's deficiency letters, allegedly contained misrepresentations with respect to the management, business purpose, and shareholders to give the false appearance of an operating company with a specific business plan (i.e. no plans to seek a merger or acquisition), independent management and an independent shareholder base. The SEC contends that Daniels and Harrison sold their first company to Fan as part of his endeavor to amass a roster of public companies for later reverse mergers with Chinese companies. Finally, the SEC alleges that Daniels and Fan then agreed to create three more public vehicles from scratch.

You should use the instructions and definitions on aiding and abetting that I gave you regarding Count II and knowingly that I gave you regarding Count III.

INSTRUCTION 21

In Count XIV, the SEC claims that Spartan, Island, and Dilley violated Sections 5(a) and 5 (c) of the Securities Act of 1933, which require the offer or sale of certain securities to be registered. Registering securities ensures that companies file essential facts with the SEC, which then makes these facts public. It's unlawful, without an exemption from the Securities Act's registration requirements, for any person to use an instrumentality of interstate commerce to buy or sell, offer to buy or sell, or transport or deliver after sale, an unregistered security.

The SEC claims that the sales of the securities in this case violated the registration requirements. Specifically, the SEC claims the transfers of stock from the shareholders of On the Move Systems Corp, Rainbow Coral Corp, First Titan Corp, Neutra Corp, Aristocrat Group Corp, First Social Networx, Global Group Enterprises Corp, E-Waste Corp, First Independence Corp, and Changing Technologies, to the stock buyers, violated the registration requirements because those transactions were not included in an effective registration statement.

Spartan, Island, and Dilley deny that these sales violated these requirements. They also claim that even if the sales were unregistered, they did not violate Section 5 because an exemption from the registration requirement was applicable. The SEC denies that this exemption applies to the relevant stock sales.

To succeed on its claim that Spartan, Island, or Dilley violated Securities Act Sections 5(a) and 5(c), the SEC must prove each of the following three elements by a preponderance of the evidence:

First, you must find that Spartan, Island, or Dilley directly or indirectly sold, or offered to sell, securities.

Second, you must find that Spartan, Island, or Dilley used an instrument of transportation or communication in interstate commerce in connection with the offer to sell or sale of securities.

And third, you must find that a registration statement for the securities was not in effect.

A "security" is an investment in a commercial, financial, or other business enterprise with the expectation that profits or other gain will be produced by others. Some common types of securities are stocks, bonds, debentures, warrants, and investment contracts.

The terms "sale" or "sell" mean the transfer of a security for value. This includes contracts for the sale for value or any other disposition for value of a security or interest in a security. An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

To "directly or indirectly" sell securities means Spartan, Island, or Dilley was a necessary participant, or substantial factor, in the sale or offer to sell that the SEC claims is in violation of Securities Act Section 5.

Spartan, Island, or Dilley may be a "necessary participant" or "substantial factor" in the sale of securities if, for example, they employ or direct others to sell or offer to sell securities, or plans the process by which unregistered securities are offered or sold.

To satisfy this element, the SEC isn't required to show that Spartan, Island, or Dilley had direct contact with any of the investors who were offered or purchased the securities at issue.

"Instrument of transportation or communication in interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, or an interstate delivery system such as Federal Express or UPS, or an inter-dealer electronic-quotation-and-trading system in the over-the-counter securities market.

In this case there is a dispute over whether the securities were registered. For each transfer alleged to be unregistered by the SEC, the SEC must prove by a preponderance of the evidence that a registration statement for the security was not in effect. It is enough for you to find in the SEC's favor if you find that any of the transfers at issue were not registered.

A person who sells unregistered securities violates Sections 5(a) and 5(c) regardless of whether the violation was committed knowingly, intentionally, recklessly, or negligently. Spartan, Island, or Dilley's good-faith belief that the sale or offer to sell was legal, and their reliance on the advice of counsel, aren't defenses to a violation of Sections 5(a) and 5(c).

If you find that the SEC has proved these three elements by a preponderance of the evidence, the burden shifts to Spartan, Island, and Dilley to prove, by a preponderance of the evidence, that the offer to sell or sale of the securities were exempt from the Securities Act's registration requirements.

Spartan, Island, and Dilley have argued that the transfers were exempt from registration because the purchasers of the securities were not underwriters.

The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking. The issuer is the company whose stock is sold. The term "issuer" includes any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

If Spartan, Island, or Dilley prove by a preponderance of the evidence that the transfer was not made by an underwriter then the transfer is exempt from registration and you must issue a verdict for Spartan, Island, or Dilley.

If you find that the SEC has proved one or more of its claims against Spartan, Island, or Dilley, I alone will determine the remedy or remedies to impose at a later date.

INSTRUCTION 22

Agencies may use guidance and other publications to educate regulated parties of existing legal requirements, or provide non-binding advice on technical issues through examples or practices to guide the application or interpretation of statutes and regulations. But interpretations contained in policy statements lack the force of law, and do not impose binding requirements or standards on persons or entities.

INSTRUCTION 23

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity. You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

INSTRUCTION 24

Your verdict must be unanimous — in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges — judges of the facts. Your only interest is to seek the truth from the evidence in the case.

INSTRUCTION 25

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and speak for you in court.

A verdict form has been prepared for your convenience.

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it and date it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I'll respond as promptly as possible — either in writing or by talking to you in the courtroom.

Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so you should be patient as you await my response. But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.

ATTACHMENT 3

No. 22-13129

IN THE

United States Court of Appeals for the Eleventh Circuit

U.S. SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee,

v.

SPARTAN SECURITIES GROUP, LTD., ET AL.
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION
DISTRICT JUDGE VIRGINIA M. HERNANDEZ COVINGTON
(NO. 8 :19-cv-00448-VMC-CPT)

DEFENDANTS-APPELLANTS' OPENING BRIEF

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Counsel for Defendants-Appellants

OS Received 04/14/2023

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT[1]

Defendants-Appellants certify that the following is a complete list of interested persons as required by Fed. R. App. P. 26.1 and 11th Cir. R. 26.1:

1. Aristocrat (ASCC), *microcap issuer involved in charged conduct**
2. Berkowitz, Dan, *Attorney for the Commission*
3. Bustillo, Eric I., *Regional Director for Plaintiff-Appellant*
4. Changing Technologies (CHGT), *microcap issuer involved in charged conduct**
5. Conley, Michael A., *Attorney for the Commission*
6. Connect X Capital Markets LLC, *Non-party owner of Defendants-Appellants Island Capital Management, LLC and Spartan Securities Group, LTD*
7. Cook, Jeffrey, *Senior Counsel for Plaintiff-Appellee*
8. Court Document Services, Inc. n/k/a ChinAmerica Andy Movie Entertainment Co. (CAME), *microcap issuer involved in charged conduct**

[1] On September 30, 2022, Appellants filed a CIP in accordance with 11th Cir. R. 26.1-1(a)(2). On October 17, 2022, Appellee filed a CIP which included certain microcap issuers. Appellants take the position that these issuers are not "interested persons" within the meaning of 11th Cir. R. 26.1-2 but includes the issuers in this CIP and has marked them with a "*".

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9. Dhillon Law Group, Inc., *District Court Law Firm for Defendants-Appellants* (added)
10. Dilley, Carl E., *Defendant-Appellant*
11. Dinello Restaurant Ventures, Inc., n/k/a AF Ocean Investment, *microcap issuer involved in charged conduct**
12. Eldred, Micah J., *Defendant-Appellant*
13. Eldred, Toni, *Indirect owner of Defendants-Appellants Island Capital Management, LLC and Spartan Securities Group, LTD through her interest in Connect X*
14. Envoy Group, Corp. (BLGI), *microcap issuer involved in charged conduct**
15. E-Waste Corp. n/k/a EZ Raider Co. (EZRG), *microcap issuer involved in charged conduct**
16. Fernandez, Wilfredo, *District Court Counsel for Plaintiff-Appellee*
17. First Independence Corp. n/k/a Codesmart Holdings, Inc. (ITEN), *microcap issuer involved in charged conduct**
18. First Social Networx, Corp. n/k/a Rebel Group, Inc. (MOXG), *microcap issuer involved in charged conduct**
19. First Titan n/k/a GlobeStar Therapeutics Corp. (RSTC), *microcap issuer involved in charged conduct**
20. First Xeris, *microcap issuer involved in charged conduct**

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21. Global Group n/k/a Tyme Technologies, Inc. (TYME), *microcap issuer involved in charged conduct**
22. Gordon, Glenn S., *Associate Regional Director for Plaintiff-Appellant*
23. Grilli, Peter J., *District Court Mediator*
24. Hernandez Covington, Virginia, U.S.D.J., *United States District Court Judge*
25. Island Capital Management, LLC, d/b/a Island Stock Transfer, *Defendant-Appellant*
26. Johnson, Alise M., *District Court Counsel for Plaintiff-Appellee*
27. Kelly, Michael J., *Counsel for Plaintiff-Appellee*
28. Kids Germ n/k/a Topaz Resources, Inc. (TOPZ), *microcap issuer involved in charged conduct**
29. Kruckenberg, Caleb, *District Court Counsel for Defendants-Appellants*
30. Lopez, David D., *Former Defendant (terminated July 30, 2021)*
31. Morales-Christiansen, Anna Patricia, *District Court Counsel for Defendants-Appellants*
32. Nestor, Christine, *District Court Counsel for Plaintiff-Appellee*
33. Matthew Seth Sarelson P.A., *District Court Law Firm for Defendants-Appellants*
34. Mooney, Brian, *District Court Mediator*

35. Neutra Corp. (NTPR), *microcap issuer involved in charged conduct**
36. New Civil Liberties Alliance, *Legal Organization for Defendants-Appellants*
37. Obscene Jeans n/k/a MyGo Games Holding Co. (OBJE), *microcap issuer involved in charged conduct**
38. On the Move n/k/a Artificial Intelligence Technology Solutions (AITX), *microcap issuer involved in charged conduct**
39. Peter J. Grilli, PA, *Law Firm for District Court Mediator*
40. PurpleReal.com, Corp., *microcap issuer involved in charged conduct**
41. Rainbow Coral Corp. (RBCC). *microcap issuer involved in charged conduct**
42. Reynolds, Scott Richard, *Indirect owner of Defendants-Appellants Island Capital Management, LLC and Spartan Securities Group, LTD through his interest in Connect X*
43. Rollins, Kara McKenna, *Counsel for Defendants-Appellants*
44. Sarelson, Matthew S., *District Court Counsel for Defendants-Appellants*
45. Spartan Securities Group, LTD., *Defendant-Appellant*
46. Staroselsky, Daniel, *Counsel for Plaintiff-Appellee*
47. Sum, Alice K., *District Court Counsel for Plaintiff-Appellee*
48. Top to Bottom Pressure Washing, Inc. n/k/a Ibex Advanced Mortgage Technology, Inc. (IBXM), *microcap issuer involved in charged conduct**

49. The Mooney Firm, PLLC, *Law Firm for District Court Mediator*
50. Tuite, Christopher P., U.S.M.J., *United States District Court Magistrate Judge*
51. Ulmer & Berne LLP, *District Court Law Firm for Defendants-Appellants*
52. U.S. Securities and Exchange Commission, *Plaintiff-Appellee*
53. Vecchione, John J., *Counsel for Defendants-Appellants*
54. VonderHeide, Heidi E., *District Court Counsel for Defendants-Appellants*
55. Quality Wallbeds, Inc. n/k/a Horrison Resources Inc. (SLPC), *microcap issuer involved in charged conduct**
56. Wolper, Alan Mitchell, *District Court Counsel for Defendants-Appellants*
57. Zitman, Christine, *Indirect owner of Defendants-Appellants Island Capital Management, LLC and Spartan Securities Group, LTD through her interest in Connect X*

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested as it may aid this Court in deciding the complex and important issues in this case. Among other issues, this case involves one of first impression regarding the availability of disgorgement for violations of the securities laws when the disgorged monies are returned to the Treasury of the United States.

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STATEMENT OF SUBJECT-MATTER AND APPELLATE JURISDICTION

On August 10, 2022, the District Court for the Middle District of Florida issued final judgments as to Defendants-Appellants Spartan Securities Group, Ltd. ("Spartan"), Island Capital Management ("Island"), Carl E. Dilley ("Dilley"), and Micah J. Eldred ("Eldred"). *See* Doc 298 (Dilley), Doc 299 (Spartan), Doc 300 (Eldred), Doc 301 (Island). Appellants filed a timely notice of appeal on September 16, 2022. Doc 305. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Did the court err in permitting time-barred claims and remedies to be put before the jury?
2. Did the court err in finding sufficient evidence to support a jury verdict that Appellants violated Rule 10b-5(b)?
3. Did the court abuse its discretion in permitting unqualified and unreliable expert testimony to go before the jury?
4. Did the court err in depriving Appellants of their right to a jury determination on the facts necessary to calculate civil penalties?
5. Did the court abuse its discretion in ordering remedies based on conduct as to which the jury found no liability?
6. Did the court err in ordering Island to pay disgorgement to the U.S. Treasury rather than for the benefit of investors?

7. Did the court abuse its discretion in failing to consider Dilley's, Spartan's, and Island's ability to pay the penalties ordered?

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

Plaintiff-Appellee Securities and Exchange Commission ("SEC") filed a 14-count complaint against Appellants in February 2019. The complaint charged Appellants with participating in a broad pair of schemes to aid and abet the creation of fake publicly traded companies and subsequent issuances of stock between December 2009 and August 2014. Doc 1; Doc 263 - Pg 1.

Appellants moved to dismiss arguing, among other things, that SEC's claims and remedies were untimely under the five-year statute of limitations imposed by 28 U.S.C. § 2462. Doc 22; Doc 23. The district court denied those motions finding that SEC had sufficiently pled a "continuing violation" that straddled the five-year limitations cutoff. Doc 44 - Pg 21-22. Defendants also filed other pretrial motions, including a *Daubert* motion to exclude the report and testimony of SEC's expert witness, James M. Cangiano, Doc 101; a motion to require a jury determination on the facts necessary to determine any civil penalties, Doc 122; and a motion for summary judgment, Doc 102. The court denied each motion. Doc 134; Doc 135; Doc 159.

Trial evidence described the process by which companies go public. First, a company typically registers with SEC by filing a registration statement on SEC Form S-1. Doc 263 - Pg 2 (citing Doc 228 - Pg 23). After SEC approves registration, the company's stock offering is declared "effective" and its shares are eligible to be sold. *Id.* (citing Doc - Pg 23-24). Next the company, otherwise known as an "issuer," requests a broker-dealer—such as Spartan—to file a Rule 15c-211 application ("Form 211") with the Financial Industry Regulatory Authority ("FINRA"). *Id.* (citing Doc - Pg 23-25).

During the Form 211 application process relevant to this case, Spartan, Dilley, and Eldred typically gathered the required information from the issuers. Doc 257-22 - Pg 3-4; Doc 224 - Pg 34-35. Generally, this information included publicly filed documents with the SEC. Doc 224 - Pg 34-35. Spartan also collected additional information that was not required, like notarized and sworn affidavits and questionnaires. Doc - Pg 35; Doc 257-23. Spartan then provided the issuers' information along with the Form 211 application to FINRA. Doc 257-10 - Pg 2-5. FINRA was free to question any information provided, and often did so. Doc 226 - Pg 33; Doc 249 - Pg 12-13.

Whenever FINRA raised questions, Spartan responded and provided information it received from the issuer or retrieved from SEC's publicly available database. Doc 228 - Pg 19-20; Doc 224 - Pg 34-35. FINRA would then "clear" the Form 211

application for stock price quotation if it was satisfied that Appellants-Defendants had provided the requisite information. *See, e.g.,* Doc 255-12 - Pg 18. After a Form 211 application is approved by FINRA, the issuers may seek clearance from the Depository Trust Company ("DTC"), which permits the issuer's shares to trade freely and electronically. Doc 228 - Pg 3 (citing Doc 228 - Pg 37-38). Crucially, information exchanged in the Form 211 application process is not publicly available. Doc 226 - Pg 84.

During the relevant time, Spartan filed Form 211 applications to initiate quotations for well over 1,200 issuers. Doc 208 - Pg 25; Doc 224 - Pg 41.

SEC's Complaint alleged violations regarding 19 issuers: Kids Germ, Obscene Jeans, On the Move, Rainbow Coral, First Titan, Neutra, Aristocrat, First Social, Global, E-Waste, First Independence, Changing Tech., First Xeris, Envoy Group, Dinello, Court Document, Quality Wallbeds, Top to Bottom, and PurpleReal. Doc 249 - Pg 12. Al Mirman or Sheldon Rose was involved with 14 of these 19 companies. Doc 249 - Pg 10 ("Mirman/Rose issuers"). Mirman and Rose later pled guilty to conspiracy to commit securities fraud for their actions related to these issuers and were convicted felons by the time of the trial below. *Id*. The other issuers—Dinello, Court Document, Quality Wallbeds, Top to Bottom, and PurpleReal.com—involved Michael Daniels, Diane Harrison, and/or Andy Fan, who

entered consent decrees with SEC. *See* Doc 249 - Pg 10-11 ("Harrison/Daniels issuers").

At all relevant times, Spartan was registered with the SEC as a broker-dealer and Island was registered with SEC as a transfer agent. Doc 249 - Pg 10. Dilley and Eldred were both registered principals of Spartan. *Id*. Dilley was also the President of Island and Eldred was its CEO. *Id*. Transfer agents serve a recordkeeping function for publicly traded companies. Doc 263 – Pg 3 (citing Doc 228 – Pg 40). They issue and cancel stock certificates, add or remove "restrictive legends" on stock certificates, and record transactions after they occur. *Id.* (citing Doc 228 - Pg 40); 234 - Pg 62.

After a 12-day trial in July 2021, the jury returned a verdict in Appellants' favor on 13 of SEC's 14 counts, and a verdict for SEC on a single count.[2] Doc 263 - Pg 9. That count alleged that Appellants made materially misleading statements or omissions in connection with purchases of certain issuers' securities in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78(j)(b), and SEC Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b), thereunder. Doc 263 - Pg 2. As to this count, the jury instructions outlined 19 types of misrepresentations or omissions that Appellants allegedly made. Doc 249 - Pg 38-39. Appellants had sought to determine the

[2] The jury's verdict fully exonerated a fifth defendant, David D. Lopez. *See* Doc 250 - Pg 1; 256 - Pg 1.

substance of their alleged misstatements throughout discovery, but SEC articulated them in writing only at the jury instruction stage. Doc 219 - Pg 8. SEC objected to a requirement that the jurors specify which of the statements they found false. *Id.* After trial, Appellants filed a renewed motion for judgment as matter of law under Federal Rule of Civil Procedure 50(b), which the district court denied. Doc 263 - Pg 30.

SEC subsequently requested various monetary and equitable sanctions, including civil penalties, permanent injunctions, lifetime penny stock bars, and disgorgement, which the court granted in part. *See generally* Doc 297. The court significantly reduced SEC's requested civil penalties and disgorgement as well as the duration of its requested injunctions and penny stock bars. Doc 297 - Pg 8 (no injunction as to Spartan); Doc 297 - Pg 10 (revising injunctive language as to Island); Doc 297 - Pg 12, 15-16 (ordering five-year injunctions as to Dilley and Eldred and revising injunctive language); Doc 297 - Pg 17-18 (ordering lifetime penny stock ban for Spartan and ten-year bans for Dilley and Eldred); Doc 297 - Pg 31 (reducing the amount of disgorgement Island was ordered to pay); Doc 297 - Pg 34-35, 37-38 (ordering Tier Two penalties); Doc 298; Doc 299; Doc 300; Doc 301.

Appellants timely appealed. Doc 305.

II. STANDARDS OF REVIEW

This Court reviews questions of statutory interpretation *de novo*. *U.S. v. Jones*, 962 F.3d 1290, 1296 (11th Cir. 2020), *cert. granted, judgment vacated on other*

grounds by 143 S. Ct. 72 (2022) (mem.). This Court also "review[s] a district court's application of a statute of limitations … *de novo*." *McCaleb v. A.O. Smith Corp.*, 200 F.3d 747, 750 (11th Cir. 2000). Likewise, "[a] district court's denial of a defendant's motion for judgment as a matter of law is reviewed *de novo*, applying the same legal standard as the district court." *Bianchi v. Roadway Exp., Inc.*, 441 F.3d 1278, 1282 (11th Cir. 2006). "The question before the district court regarding a motion for judgment as a matter of law remains whether the evidence is 'legally sufficient to find for the party on that issue,' … regardless of whether the district court's analysis is undertaken before or after submitting the case to the jury." *Chaney v. City of Orlando,* 483 F.3d 1221, 1227 (11th Cir. 2007) (quoting Fed. R. Civ. P. 50(a)(1)). Under Rule 50(b), "a court's sole consideration of the jury verdict is to assess whether that verdict is supported by sufficient evidence." *Id.*

The district court's decisions regarding the exclusion or admission of expert testimony are reviewed under "an abuse-of-discretion framework." *Hughes v. Kia Motors Corp.*, 766 F.3d 1317, 1328 (11th Cir. 2014). Under this framework, a district court's determination is provided "considerable leeway[,]" *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999), and "requires that [appellate courts] defer to the district court's ruling unless it is 'manifestly erroneous.'" *Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1291 (11th Cir. 2005) (internal quotation marks omitted). Similarly, under the securities laws, "the amount of a monetary remedy … is

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reviewed for abuse of discretion." *SEC v. Warren*, 534 F.3d 1368, 1369 (11th Cir. 2008) (per curiam).

> [A]n abuse of discretion "can occur in three principal ways: [1] when a relevant factor that should have been given significant weight is not considered; [2] when an irrelevant or improper factor is considered and given significant weight; and [3] when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment."

Ameritas Variable Life Ins. Co. v. Roach, 411 F.3d 1328, 1330 (11th Cir. 2005) (quoting *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 970 (8th Cir. 1984)).

SUMMARY OF ARGUMENT

The district court erred throughout the pendency of this litigation.

First, all the relief SEC sought constituted "penalties" subject to 28 U.S.C. § 2462's five-year statute of limitations. *See Kokesh v. SEC*, 581 U.S. 455, 457 (2017). Likewise, the requested injunctions and penny stock bars were "penalties" because those sanctions serve "retributive or deterrent purposes." *Id.* at 467 (citation omitted). The district court committed legal error by permitting time-barred claims to be presented to the jury, which directly harmed Appellants' statutory and procedural rights. The court then abused its discretion when it considered the same time-barred evidence in determining sanctions and remedies.

Second, Appellants did not make material misrepresentations or materially misleading omissions in connection with the sale of securities because the relevant statements were made to a *regulator* in a nonpublic process, they were not material,

and they did not "coincide with" any securities transaction. In addition, the only arguably false statements the jury could have found were either not material, conclusively rejected by the jury, or omissions that Appellants had no duty to disclose. For instance, Appellants were under no duty to disclose nonpublic information about hypothetical future events. The court committed legal error when it denied Appellants' Rule 50(b) motion.

Third, the district court failed in its gatekeeping role under Federal Rule of Evidence 702 and abused its discretion when it permitted SEC's expert witness to provide unqualified, unreliable, and unfettered testimony outside the scope of his knowledge and expertise. The court abused its discretion by considering this unreliable evidence in denying Appellants Rule 50(b) motion and in determining sanctions.

Fourth, the Seventh Amendment guarantee of a jury trial extends to factual determinations necessary to calculate penalty amounts under the Exchange Act's three-tier penalty scheme. The court erroneously denied Appellants' constitutional right to a jury determination on the facts necessary to calculate the penalty.

Fifth, disgorgement was impermissible because the disgorged funds were ordered to be paid to the Treasury rather than for the benefit of investors; because there was no causal connection between the disgorged funds and the conduct at issue, SEC did not provide a reasonable approximation of the allegedly ill-gotten gains, and Island's

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conduct was not the cause of any uncertainty in the disgorgement calculation. The district court erred when it ordered Defendant-Appellant Island to pay disgorgement to the Treasury when there were no identified harmed investors and the monies sought to be disgorged were from a third-party's unclean hands.

Sixth, due process and justice forbid courts from ordering remedies based on conduct for which the jury found no liability. The district court erred when it ordered relief based on alleged conduct—aiding and abetting securities violations or participation in a scheme to defraud—that was rejected by the jury multiple times. Doc 250; Doc 256 (jury found no liability under Counts 1-3, 5, 7, and 11 for aiding and abetting violations or participating in schemes to defraud).

Finally, a defendant's ability to pay is a factor that should be given significant weight at the penalty phase, as not doing so violates the Excessive Fines Clause of the Eighth Amendment. The district court erred when it failed to consider Dilley's, Spartan's, or Island's ability to pay the civil penalties it ordered.

The Court should vacate the judgment against Appellants and remand for entry of judgment in favor of Appellants on the sole remaining count.

ARGUMENT

I. SEC'S CLAIMS AND THE REMEDIES ORDERED WERE TIME-BARRED

A. There Were No Actionable Statements Within the Statute of Limitations Period

The district court erred when it denied Appellants' motion for summary judgment and permitted time-barred claims to go before the jury, and again when it denied their Rule 50(b) motion and ordered sanctions based on that same time-barred conduct.

"Statutes of limitation are vital to the welfare of society and are favored in the law." *Wood v. Carpenter*, 101 U.S. 135, 139 (1879). That is particularly true where SEC sat on its rights and, by its own admission, willfully delayed in commencing this action. When the Complaint was filed, and when the district court ruled on the Appellants' motions to dismiss, *see* Doc 44, as well as their motion for summary judgment, *see* Doc 135, all forms of relief SEC sought in its complaint were subject to the five-year statute of limitations codified at 28 U.S.C. § 2462. *See Kokesh*, 581 U.S. at 457.[3] SEC injunctions and penny stock bars are "penalties" because they serve "retributive or deterrent purposes." *Id.* at 467 (citation omitted); *but see SEC*

[3] During the pendency of this litigation, the statute of limitations for disgorgement and certain claims for equitable relief were amended and retroactively extended to ten years under specified circumstances. *See* The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 ("2021 NDAA"), Pub. L. No. 116-283, § 6501, 134 Stat. 3388, 4625-26 (2021) (amending 15 U.S.C. § 78u).

v. Graham, 823 F.3d 1357, 1360 (11th Cir. 2016) (pre-*Kokesh* case finding injunction an equitable remedy not subject to § 2462). "[T]he most natural reading of [28 U.S.C. § 2462]" is that a claim, even one based on fraudulent conduct, accrues when the alleged conduct occurs. *Gabelli v. SEC*, 568 U.S. 442, 448 (2013). Section 2462 "sets a fixed date when exposure to the specified Government enforcement efforts ends[.]" *Id.* All the remedies SEC sought were subject to § 2462's five-year statute of limitations at the time the Complaint was filed and when the district court denied Appellants' summary judgment motion. SEC was without lawful power to bring this case in the first instance, let alone carry it through to trial.

Section 2462 promotes "repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Rotella v. Wood*, 528 U.S. 549, 555 (2000). It also "promote[s] justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Gabelli*, 568 U.S. at 448 (quoting *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-349 (1944)).

The court erred when it denied Appellants' statute of limitations arguments. *See* Doc 44 - Pg 20-22; Doc 135 - Pg 15-16. And that error was not harmless; just days after the district court denied Appellants' summary judgment motion, Congress extended SEC's statute of limitations and purported to apply the newly extended

limitations period not only to future cases but also pending cases. *See supra* footnote 3.

There is no legally sufficient evidence that any misrepresentations or omissions occurred within the time prescribed by § 2462. *See Chaney*, 483 F.3d at 1227. Spartan, a registered broker-dealer, was involved in the FINRA Form 211 application process and played no role in recording or transferring shares of any issuer. Doc 249 - Pg 10; Doc 263 - Pg 2-3, (describing FINRA Form 211 process and how transfer agents operate). Only Dilley, Eldred, and Spartan could have possibly made misrepresentations or omissions in relation to the Form 211 application process. *See* Doc 263 - Pg 18.[4] As a transfer agent, Island played no role in the FINRA Form 211 application process, nor did SEC allege such involvement, nor did the district court find it. Doc 263 - Pg 2-3, 8, 28-30 (no mention of Island in connection with FINRA Form 211 application process).

Jury Instruction 19 listed nineteen alleged misrepresentations and omissions. Doc 249 - Pg 35-40. It provides a framework for establishing the timeline for when any misrepresentations or omissions could have been made. *Id.* Considering the tolling agreement between the parties, the conduct at issue must have occurred *after*

[4] The court committed legal error in determining that statements were "made" by Appellants at all. *See infra*, Sec. II.

October 24, 2013, to fall within Section 2462's five-year limitations period. Doc 303 - Pg 83, 94.

First, the latest date that any misrepresentation or omission could have been made to FINRA is the date FINRA cleared the issuer's Form 211 application. Doc 263 - Pg 2-3. Of the Mirman/Rose issuers, only three—Envoy, Changing Technologies, and First Xeris—were still pending within the statute of limitations period. *See* Doc 257-11 - Pg 5 (Envoy application cleared December 31, 2013); Doc 257-22 - Pg 15 (Changing Technologies application cleared January 28, 2014); Doc 255-12 - Pg 18 (First Xeris application cleared March 18, 2014). Of the Harrison/Daniels issuers, only two—Top to Bottom Pressure Washing and PurpleReal.com–were still pending. *See* Doc 255-63 - Pg 4 (Top to Bottom's application cleared October 29, 2013); Doc 257-82 - Pg 20 (PurpleReal.com application certified on July 31, 2014, but never cleared by FINRA). Liability could be found, if at all, only for misrepresentations or omissions related to the Form 211 applications for these five issuers. But the court, in denying Appellants' Rule 50(b) motion, relied on misrepresentations or omissions relating to issuers other than these five. *See, e.g.,* Doc 263 - Pg 27 (discussing Kids Germ Defense).

Second, the Jury Instruction list included alleged misrepresentations or omissions made to DTC. Doc 249 - Pg 38-39. Such misrepresentations or omissions occurred, if at all, when the statements were made. At trial, SEC established that statements

were made only by Spartan, Island, or Dilley in relation to three issuers: Kids Germ, On the Move, and Obscene Jeans. *See, e.g.,* Doc 257-139 (email dated Jan. 20, 2010); Doc 240 - Pg 111-13, 115-16. The court relied only on statements made regarding Kids Germ to deny Appellants' Rule 50(b) motion. *See* Doc 263 (relying on Doc 257-139 - Pg 2-3 (email dated Jan. 20, 2010)); Doc 240 - Pg 110, 111 (trial testimony discussing Doc 257-139 (email dated Jan. 13, 2010) and Kids Germ's February 2010 reverse merger); Doc 257-87 (email dated Jan. 4, 2010); Doc 254 - Pg 69-70 (expert testimony discussing Doc 257-139).[5] But all those statements were made *before* October 24, 2013, and were outside the statute of limitations period. There is no legally sufficient evidence establishing misrepresentations or omissions made to DTC, so there can be no finding of liability on that basis.

Finally, the Jury Instruction 19 list also included alleged misrepresentations and omissions regarding the designation of shares of the Mirman/Rose issuers as free trading and the bulk issuance and sales of those securities. Doc 249 - Pg 39.[6] But SEC never established any specific misrepresentations or omissions made about those issuers within Section 2462's five-year limitations period. Such a showing is foreclosed by the jury's determination that Dilley, Spartan, and Island did not sell

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[5] Doc 254 is the redacted version of Doc 230.

[6] Of the three Mirman/Rose issuers who had Form 211 applications pending within the statute of limitations period, SEC only established the bulk transfer date of one issuer, Changing Technologies on June 13 and 20 of 2014. *See* Doc 292-1.

unregistered securities. *See* Doc 250 - Pg 6 (Count 14); Doc 256 - Pg 4. Even if it were not, there is a total failure of proof that any specific misrepresentations or omissions were made *after* October 24, 2013. At best, SEC established only that some discrete statements were made by Dilley regarding the designation of shares of Global Group and E-Waste Corp., but those were *prior to* October 24, 2013. *See* Doc 255-34 (email dated Jan. 1, 2013); Doc 257-145 (email dated Jan. 2, 2013). The court erroneously relied on those time-barred statements in denying Appellants' Rule 50(b) motion. *See* Doc 263 - Pg 29-30. There was no legally sufficient evidence establishing any misrepresentations or omissions within the statute of limitations period.

This Court should vacate the district court's order denying Appellants' Rule 50 motion and remand for entry of judgment in favor of Appellants.

B. The "Continuing Violations Doctrine" Is Inapplicable to Discrete Acts Like the Misrepresentations and Omissions SEC's Theory of Liability Under Rule 10b-5 Relied Upon

In rejecting Appellants' statute of limitations arguments, the district court relied on the "continuing violations doctrine," which can toll a statute of limitations "where the violation giving rise to the claim continues to occur within the limitations period." Doc 135 - Pg 15-16 (quoting *Nat'l Parks & Conservation Ass'n, Inc. v. Tenn. Valley Auth.*, 502 F.3d 1316, 1322 (11th Cir. 2007). Quoting its earlier denial of Appellants' motion to dismiss, the district court applied this doctrine because SEC

had alleged "scheme liability extending into a period within the statute of limitations." Doc 135 - Pg 16. But the court's reasoning was erroneous.

This Court has never applied the continuing violations doctrine in the context of a securities enforcement case. Courts have been "extremely reluctant" to extend the continuing violations doctrine beyond employment discrimination matters. *Nat'l Parks Conservation Ass'n, Inc. v. Tenn. Valley Auth.*, 480 F.3d 410, 416 (6th Cir. 2007). Other courts have questioned the applicability of the doctrine in SEC enforcement actions. *See SEC v. Jones*, No. 05-cv-7044, 2006 WL 1084276, at *4 (S.D.N.Y. Apr. 25, 2006). Even if this Court were to extend the doctrine to securities enforcement matters the doctrine would be inapplicable here because misrepresentations and omissions that violate Section 10(b) and Rule 10b-5(b) of the Exchange Act are discrete acts, not part of a scheme or continuing related action. And the jury found no such scheme. The Supreme Court has "held that discrete acts that fall within the statutory time period do not make timely acts that fall outside the time period." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 112, 114-115 (2002). Any claim "based on particular misrepresentations and omissions" is barred by the usual statute of limitations. *SEC v. Kovzan*, No. 11-cv-2017, 2013 WL 5651401, at *3 (D. Kan. Oct. 15, 2013).

The continuing violations doctrine is also "limited" to situations in which "a reasonably prudent plaintiff would have been unable to determine that a violation

had occurred." *Ctr. for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1335 (11th Cir. 2006). But the exception does not apply to SEC, whose "very purpose is to root [fraud] out," and which "has many legal tools at hand to aid in that pursuit." *Gabelli*, 568 U.S. at 451. Just as "grafting" the so-called "discovery rule" onto Section 2462 would be "utterly repugnant to the genius of our laws' [because penalties could] 'be brought at any distance of time[,]'" so too would permitting the continuing violations doctrine to expand the statute of limitations period here. *Id.* at 452 (quoting *Adams v. Woods*, 6 U.S. (2 Cranch) 336, 342 (1805)). SEC knew full well of the alleged misconduct by 2016, when both Mirman and Rose pled guilty to securities fraud for making misstatements related to the issuers involved—years before this case was filed. *See* Doc 249 - Pg 10 (Jury Instruction 10 listing stipulations); *see also* Doc 249 - Pg 10-11 (regarding actions against Daniels, Harrison, and Fan). SEC could have known about the alleged conduct as early as 2012, when its own examiners conducted a months-long, on-site examination of Spartan and Island, where it requested and reviewed records related to at least three of the issuers: Aristocrat, First Titan, and Neutra. Doc 249 - Pg 14; Doc 224 - Pg 48 (SEC's examiners "sat in [Spartan's] conference room, and they requested reams and reams and reams of documentation … And [the] next day [they] requested more and more documents"); Doc 208 - Pg 42. Permitting SEC—one of the most powerful litigating parties in the country—to sleep on its rights by relying on the continuing violations doctrine

contravenes the purpose of Section 2462 and denies defendants their legal protections. *Gabelli*, 568 U.S. at 448. This Court should hold that Section 2462's five-year statute of limitations applies.

The remedies ordered by the district court were time-barred both when SEC filed its Complaint and when the district court denied summary judgment.

II. APPELLANTS DID NOT VIOLATE RULE 10b-5(b) AS A MATTER OF LAW AND THE COURT ERRED WHEN IT DETERMINED USING THE WRONG LEGAL STANDARD THAT THERE WAS SUFFICIENT EVIDENCE THAT THEY DID

To establish a violation of Rule 10b-5(b), SEC must prove Appellants made "(1) material misrepresentations or materially misleading omissions, (2) in connection with the purchase or sale of securities, (3) made with scienter." *SEC v. Merch. Capital, LLC*, 483 F.3d 747, 766 (11th Cir. 2007).

Under Rule 10b-5, the test for materiality is "whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action." *Id.* at 766 (citations omitted). By emphasizing whether an investor would find a particular piece of information important, "the materiality inquiry … filter[s] out essentially *useless information that a reasonable investor would not consider significant*, even as part of a larger 'mix' of factors to consider in making his investment decision." *SEC v. Goble*, 682 F.3d 934, 943 n.5 (11th Cir. 2012) (emphasis in original, cleaned up). "Thus, the relevant 'mix' of information is those facts an *investor* would consider when making an investment decision." *Id.*

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(emphasis added). And, to be considered, the information in that mix first would have to be "available to the hypothetical reasonable investor[.]" *SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1248 (11th Cir. 2012). It is not enough to suggest that an "investor might have considered the misrepresentation or omission important." *Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 162 (2d Cir. 2000) (citations omitted). Omissions, as opposed to misrepresentations, are "actionable only to the extent that the absence of those facts would, under the circumstances, render another reported statement misleading to the reasonable investor, in the exercise of due care." *In re Galectin Therapeutics, Inc. Sec. Litig.*, 843 F.3d 1257, 1275 (11th Cir. 2016) (internal quotation marks omitted).

Misrepresentations and omissions are different in kind. Material misrepresentations require defendants to "actually make a false or misleading statement in order to be held liable under Section 10(b)." *Wright v. Ernst & Young LLP*, 152 F.3d 169, 175 (2d Cir. 1998).

> For purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it. Without control, a person or entity can merely suggest what to say, not "make" a statement in its own right. One who prepares or publishes a statement on behalf of another is not its maker.

Janus Capital Grp., Inc. v. First Derivative Traders, 564 U.S. 135, 142 (2011).

Omissions do not violate Rule 10b-5 unless defendant has "a duty to disclose" the omitted information. *Badger v. S. Farm Bureau Life Ins. Co.*, 612 F.3d 1334,

1340-41 (11th Cir. 2010). The "mere possession of nonpublic market information" does not create a duty to disclose. *Chiarella v. U.S.*, 445 U.S. 222, 235 (1980).

SEC must also prove that any misrepresentation or omission occurred "in connection with" the purchase or sale of securities. This element is constructed flexibly to "effectuate [the statute's] remedial purpose." *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (quotation omitted). But the violation and the sale of securities must, at a minimum, "coincide." *Id.* at 822. The misrepresentation or omission and a securities transaction must occur at the same time. Conduct that is not "the type of behavior meant to be forbidden by § 10(b)," does not usually meet the "in connection with" requirement. *Goble*, 682 F.3d at 946. When conduct "had no effect on the broader securities market and would not impact an investor's decision to purchase a security," it cannot be said to be made "in connection with" the purchase or sale of securities. *Id.*

The district court erred in denying Appellants' Rule 50(b) motion. First, the court failed to differentiate misrepresentations and omissions and, critically, applied the wrong legal standard to the alleged omissions. The court also failed to identify *any* duty that the Appellants had to disclose the facts that they allegedly omitted. Regarding misrepresentations, the court erred in determining that Appellants "made" misrepresentations. There was also no evidence supporting a finding that any of the

alleged statements or omissions listed in Jury Instruction 19 was material, nor that any of them occurred "in connection with" the purchase or sale of securities.

A. Eldred Did Not Make Any Actionable Misrepresentations or Omissions

Eldred was the signing principal for four Form 211 Applications—Court Document, Quality Wallbeds, Top to Bottom, and PurpleReal.com—and could be the "maker" of the statements contained only in those applications and their supporting materials like cover letters. Doc 224 - Pg 62; 249- Pg 12; Doc 257-70 (Court); Doc 257-76 (Quality); Doc 255-62 (Top to Bottom); Doc 255-63 (same), Doc 257-82 (PurpleReal.com). But he cannot be personally responsible for the statements made by the *issuers* in the application materials because, despite the court's determination to the contrary, it was the *issuers* who made the representations in those applications. *See* Doc 214 - Pg 77, 94; Doc 228 - Pg 19-20. Eldred was responsible only for asserting, truthfully, that the *issuers* had made the representations, not that they had made them truthfully. *See Janus*, 564 U.S. at 142. The material in the cover letters regarding initiation of the application was true. Doc 224 - Pg 65; Doc 257-70 - Pg 8; Doc 257-76 - Pg 8; Doc 255-62 - Pg 8; Doc 257-82 - Pg 21.

The district court appears to have premised Eldred's liability on the basis that he omitted some nonpublic information regarding Daniels, Harrison, and Fan regarding their future intentions for the issuers they were involved with. *See* Doc 249 - Pg 38-

39. The court seemed to assume as much in denying the Rule 50(b) motion. *See* Doc 263 - Pg 7, 15–16. But basing Eldred's liability finding on such omissions was erroneous because Eldred was under no duty to disclose information about nonpublic, hypothetical future events, nor did the court identify any duty to disclose such. Absent such a duty, there can be no liability for Eldred. *Badger*, 612 F.3d at 1341 ("[T]his Court has also recognized that 'a defendant's *omission* to state a material fact is proscribed only when the defendant has a duty to disclose.'" (citation omitted and emphasis added)).

Even if Eldred had a duty to disclose, these omissions were not material. Daniels, Harrison, and Fan's involvement with these issuers, and their involvement in other business deals, was disclosed to FINRA before these four applications were cleared. Doc 228 - Pg 41-42; Doc 255-62 - Pg 14-15; Doc 257-70 - Pg 23-26; Doc 257-76 - Pg 13-17; Doc 257-82 - Pg 27-30.

Nor can it be said that anything about these individuals or their involvement with the issuers was material to the investing public. This information might have changed a *regulator*'s mind about the application, but that is not enough to establish liability. *See* Doc 263 - Pg 22-23 (court discussing FINRA investigator's testimony). Such information would have had no impact on an *investor's* decision to purchase shares at some point in the future and was immaterial. *See Goble*, 682 F.3d at 944.

Finally, it cannot be said that the statements made to FINRA in nonpublic applications have been made "in connection" with the purchase or sale of securities. It is undisputed that the investing public had no access to the Form 211 applications, or any communications related thereto. *See, e.g.*, Doc 224 - Pg 37. The statements or omissions Eldred allegedly made did not "coincide" with any securities transaction because the alleged statements and omissions were related to the Form 211 application process, which occurred well before any securities transactions. The undisputed evidence is that FINRA clearance is but one step, entirely in the control of a third-party regulator, that must occur before any issuer's stock could be publicly traded. Doc 263 - Pg 2-3 (generally describing the process to go public).

There being no legally sufficient evidence to support the jury's verdict as to Eldred, this Court should vacate the district court's judgment and enter a judgment in favor of Eldred.

B. Island Did Not Make Any Actionable Misrepresentations or Omissions

Of the nineteen types of alleged misrepresentations and omissions identified in the jury instructions, only the last three, regarding statements made to DTC and those relating to the stock's registration status, could have been made by Island or Dilley. Doc 249 - Pg 38-39. But none is actionable.

First, the statements to DTC concerning shell status were true because the issuers had "nominal" assets and operations as shown by publicly available filings on SEC's

EDGAR system. Doc 238 - Pg 54; Doc 194 - Pg 20-21, 24, 26-28; Doc 257-93 (sending copy of On the Move's 8-K); Doc 257-12 (Kids Germ 10-K). The statements were made contemporaneously with the underlying information supporting the conclusion in nonpublic communications. *Ibid.* And they were not made to the investing public and were not made "in connection" with the purchase or sale of securities because they were made in relation to DTC clearance, which is but one step in the process and controlled by a third party. Doc 263 - Pg 3; *see also* Doc 257-92; Doc 257-100; Doc 257-139. The court's determination is not supported by the facts. *See* Doc 263 - Pg 28-29. True statements cannot mislead a reasonable investor. *See Morgan Keegan*, 678 F.3d at 1250. Nor could they have influenced the broader securities market. *See Goble*, 682 F.3d at 946.

The statements regarding the stock's registration status are also not actionable, and the jury's determination to the contrary, Doc 263 - Pg 29-30, was foreclosed by the jury's verdict rejecting the theory that the stock needed to be registered and stamped with restrictive legends. Doc 250 - Pg 6 (Count 14); Doc 256 - Pg 4. The court's reliance on the SEC's expert witness's testimony is improper and cannot support its finding. *See infra*, Sec. III. And to the extent Island's liability hinges on omissions, neither the SEC nor the court identified what (if any) duty Island had to disclose the allegedly omitted information. *See Badger*, 612 F.3d at 1341. SEC's

expert was not qualified to opine on such a duty, and he never did. The order must be vacated.

C. Spartan Did Not Make Any Actionable Misrepresentations or Omissions

Of the nineteen alleged misrepresentations and omissions identified in the jury instructions, sixteen relate to statements or omissions in Form 211 applications that Spartan filed with FINRA. Doc 249 - Pg 38-39.

Neither Spartan, nor Eldred, nor Dilley were "makers" of any statement to FINRA. As the evidence showed, all the statements provided to FINRA were from the issuers themselves. Doc 257-22 - Pg 8 ("The Issuer described … ."); *id.* ("The issuer has represented … ."). The evidence established that *the issuers* had made these statements, and that they were backed up by written certifications from the issuers' officers attesting to the accuracy of each of these statements, and attesting that the issuers had not omitted any relevant or material information. Doc 214 - Pg 77, 94; Doc 224 - Pg 34-35; Doc 257-23. Spartan cannot be held liable under Rule 10b-5(b) because it had no "control" over the *issuers*' statements, whether false or not, and "[o]ne who prepares or publishes a statement on behalf of another is not its maker." *See Janus*, 564 U.S. at 142. Accurately repeating or forwarding an issuer's statements to FINRA is not sufficient to show that Spartan "made" statements in violation of Rule 10b-5(b).

Even if Spartan could be deemed to have "made" actionable statements or omissions, none of the statements or omissions listed in Jury Instruction 19 was material. It is undisputed that the listed statements and omissions were made in the context of the Form 211 application process, particularly the cover letters, and that those materials were not visible to investors or anyone else other than FINRA. Doc 226 - Pg 64; Doc 224 - Pg 37. The materiality test asks whether a reasonable *investor* would consider the misrepresentation or omission significant. Here, at best, SEC and the district court found that *regulators* may have considered the cover letter information to be important in determining whether to clear an issuer, but that is not enough to support a Rule 10b-5(b) violation. Doc 226 - Pg 52-53, 71. The court makes a logical leap to assume that nonpublic information that is important to regulators is also significant to investors, Doc 263 - Pg 22-23, but that is not so. *Goble*, 682 F.3d at 944 (finding a "scheme to defraud FINRA" would not affect an investor's underlying investment decision). The undisputed evidence shows that when FINRA examiners questioned an issuer about Mirman's role, disclosures about Mirman had no material impact on FINRA's decision to clear the issuer. Doc 226 - Pg 52, 66. And if disclosure of Mirman's role had no material impact on FINRA, how could it be material to an *investor*'s decision? Likewise, the omissions relating to Daniels, Harrison, and Fan, who were never convicted of any wrongdoing, are

even less material as discussed above. Spartan, like Eldred, was not determined to have any duty to disclose information about nonpublic, hypothetical future events.

Finally, the Form 211 applications and related communications cannot support liability under Rule 10b-5(b) because they would not have an impact on an investor's decisions to purchase any security. Section 10(b) was not targeted at misleading statements *to regulators* like FINRA, so it does not encompass alleged misstatements or omissions directed at FINRA. *See Goble*, 682 F.3d at 946. And, as discussed above, these alleged statements and omissions, made before FINRA cleared the relevant issuers' applications did not "coincide" with any securities transactions. The district court's apparent view that the "in connection with" requirement encompasses *any* step in the process of going public cannot be squared with the fact that the violative action must "coincide with" a securities transaction. *See Zandford*, 535 U.S. at 822.

The court erred when it found that there was legally sufficient evidence to support the jury's verdict as to Spartan. This Court should vacate the district court's judgment and enter a judgment in favor of Spartan.

D. Dilley Did Not Make Any Actionable Misrepresentations or Omissions

The verdict against Dilley cannot be supported for the same reasons discussed above. Dilley was responsible only for the Form 211 applications that he signed but none of them was actionable as a matter of law. *See supra,* Sec. II.C. And with

respect to his role at Island, the statements concerning shell status were not false or misleading, much less materially so, and the statements concerning past transfers were also true, and could not have retroactively influenced investment decisions. *See supra,* Sec. II.B.

The court erred when it found that there was legally sufficient evidence to support the jury's verdict as to Dilley. This Court should vacate the district court's judgment and enter a judgment in favor of Dilley.

III. THE COURT ABUSED ITS DISCRETION WHEN IT ADMITTED UNRELIABLE EXPERT EVIDENCE OUTSIDE THE WITNESS'S AREA OF EXPERTISE

The district court also failed in its gatekeeping duty, causing unqualified and unreliable evidence to go before the jury. Under Federal Rule of Evidence 702, courts may consider expert testimony if

> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. The court serves a "gatekeeping duty to determine whether the expert testimony 'is not only relevant, but reliable.'" *Bostick v. State Farm Mut. Auto. Ins. Co.*, 321 F.R.D. 414, 416 (M.D. Fla. 2017) (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993)); *see Daubert*, 509 U.S. at 597 (expert's testimony must be "relevant to the task at hand"). The gatekeeping

function "ensure[s] that speculative, unreliable expert testimony does not reach the jury' under the mantle of reliability that accompanies the appellation of 'expert testimony." *Rink*, 400 F.3d at 1291 (quoting *McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1256 (11th Cir. 2002)).

An expert's "qualifications, reliability, and helpfulness" must not be conflated by the district court. *U.S. v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004). These considerations must be satisfied by a preponderance of the evidence, and the party offering the expert bears the burden of persuasion. *Rink*, 400 F.3d at 1292; *Frazier*, 387 F.3d at 1259-60.

Being an expert in general does not make one an expert for *everything*. This is because an expert's qualifications to offer opinions may be based on a combination of his "knowledge, skill, experience, training, or education[,]" but he "must be *at least minimally qualified* in his field." *Hendrix v. Evenflo Co.*, 255 F.R.D. 568, 578 (N.D. Fla. 2009) (quoting Fed. R. Evid. 702) (emphasis added), *aff'd sub nom. Hendrix ex rel. G.P. v. Evenflo Co.*, 609 F.3d 1183 (11th Cir. 2010). "Assuming an expert is qualified to testify, the expert may testify only about matters within the scope of his or her expertise." *Cordoves v. Miami-Dade Cty.*, 104 F. Supp. 3d 1350, 1358 (S.D. Fla. 2015) (citing *City of Tuscaloosa v. Harcors Chemicals, Inc.*, 158 F.3d 548, 562 (11th Cir. 1998)). Time in an industry *may* give a witness a generalized understanding, but that understanding does "not endow[] him with a sufficient body

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of specialized knowledge to assist the trier of fact in understanding the evidence or issues of this case relating to the precise contours of [a regulated-entity's] duties … or its performance of those duties." *Pleasant Valley Biofuels, LLC v. Sanchez-Medina*, No. 13-23046-CIV, 2014 WL 2855062, at *4 (S.D. Fla. June 23, 2014). The opinions and testimony of experts with no experience, or experience that is limited or dated in the field they are purporting to testify about, should be excluded. *See Payne v. C.R. Bard, Inc.*, 606 F. App'x 940, 943 (11th Cir. 2015) (unpublished) (upholding exclusion of "limited and dated" experience because there was no sufficiently established "nexus" between the experience and the opinions offered). "[E]xpert testimony regarding matters outside of the witness's expertise is inadmissible, even if the expert is qualified to testify about other matters." *Cordoves*, 104 F. Supp. 3d at 1358.

An expert's lack of experience creates a reliability problem because experts "must explain *how* [their] experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts." *Frazier*, 387 F.3d at 1261. Where, as here, there is a "clear 'overlap' between [the] expert's qualifications and the reliability of his [testimony,]" the reliability analysis cannot be conducted absent consideration of the expert's qualifications. *Hendrix*, 255 F.R.D. at 578.

The Appellants objected to the admission of testimony by SEC's proffered expert witness, James Cangiano, regarding transfer agents and DTC eligibility because he had *no experience* in the transfer agent industry. None. The court nonetheless permitted Cangiano to testify "on the role of transfer agents in the microcap market and how entities generally use transfer agents concerning stocks … [and the] standards, customs and practices [of transfer agents] in the microcap over-the-counter market." Doc 254 - Pg 19; Doc 228 - Pg 117-120. Cangiano had no basis for his testimony, as evidenced during his *voir dire* examination. During that examination, Cangiano admitted he never worked for a transfer agent. Doc 228 - Pg 108-109. He also testified that neither he nor either of the self-regulatory organizations he worked for, FINRA and its predecessor National Association of Securities Dealers, ever regulated transfer agents. Doc 228 - Pg 109. Nothing in the record establishes even minimal qualifications—via education or experience—that would permit Cangiano to opine on matters related to transfer agents and DTC eligibility, so the court's determination to the contrary was manifestly erroneous. Cangiano not only had no experience with transfer agents, but he also had never written about them and certainly not in any peer-reviewed forum. He was a classic "expert on everything," and his wide-ranging and unfettered testimony was prejudicial and unreliable and should not have gone to the jury. *See Schaffer v. Merrill Lynch Pierce Fenner & Smith LLC*, 779 F.Supp.2d 1085, 1091 (N.D. Cal.

2011) (a degree does not make one an "expert on everything" in the field). Cangiano simply parroted SEC's views and provided no genuine expertise on these issues that any court could deem reliable under the *Daubert* standard. All his testimony in connection with *Island* should be excluded. Outside of his testimony that the issuer's stock was restricted, nothing else in the record supports a judgment that Spartan, Island, or Dilley made material misrepresentations or omissions regarding the registration status of the shares. *See* Doc 263 - Pg 26, 27, 28-29 (relying on Cangiano's testimony at Doc 254 - Pg 44-45, 45-46, 69-70 and Doc 234 - Pg 28-29, 42). And the jury found no liability on the Count that required a finding the stock was restricted. Doc 250 - Pg 6 (Count 14); Doc 256 - Pg 4.

The district court not only abused its discretion by allowing this unqualified and unreliable testimony to go before the jury, but it also pointed to the same unreliable testimony in denying Appellants' Rule 50(b) motion. *See, e.g.*, Doc 263 - Pg 26, 27, 28-29.

IV. APPELLANTS WERE DENIED THEIR CONSTITUTIONAL RIGHT TO A JURY DETERMINATION OF THE FACTS NECESSARY TO ESTABLISH THE CIVIL PENALTY

The right to a trial by jury is, and remains, a "fundamental" component of our justice system. *Reid v. Covert*, 354 U.S. 1, 9-10 (1957). "[A]ny seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935). The Framers "considered the right to trial by jury

'the heart and lungs, the mainspring and the center wheel' of our liberties, without which 'the body must die; the watch must run down; the government must become arbitrary.'" *U.S. v. Haymond*, 139 S. Ct. 2369, 2375 (2019) (quoting Letter from Clarendon to W. Pym (Jan. 27, 1766), in 1 Papers of John Adams 169 (R. Taylor ed. 1977)). This right provides "an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 (1979) (Rehnquist, J., dissenting). As Blackstone said, "the most transcendent privilege which any subject can enjoy, or wish for [is] that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals." *Reid*, 354 U.S. 9-10 (quoting 3 William Blackstone, *Commentaries* 379).

A. The Seventh Amendment Right to a Jury Trial Attaches to Any Factual Determinations that Impact Appellants' Liability

The Seventh Amendment guarantees the right to trial by jury in "Suits at common law." U.S. Const. amend. VII. Where, as here, a plaintiff's claim is created by statute that is silent with respect to jury trial rights, courts determine whether the statutory action "is more similar to cases that were tried in courts of law than to suits tried in courts of equity or admiralty" by "exam[ining] both the nature of the action and of the remedy sought." *Tull v. U.S.*, 481 U.S. 412, 417 (1987) (finding a constitutional

right to a jury trial to determine liability on legal claims in an action to enforce civil penalties under the Clean Water Act).

Under *Tull*'s two-part analysis, courts first "compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity," and then, "examine the remedy sought and determine whether it is legal or equitable in nature." *Id.* at 417-18. The second inquiry into the nature of the remedy sought "is more important than the first." *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989). The Seventh Amendment right applies even when a proceeding "involve[s] a mix of legal and equitable claims[.]" *Jarkesy v. SEC*, 34 F.4th 446, 454 (5th Cir. 2022). "[T]he facts relevant to the legal claims should be adjudicated by a jury, even if those facts relate to equitable claims too." *Id.* (citing *Ross v. Bernhard*, 396 U.S. 531, 537-38 (1970)).

The Supreme Court has held that a government enforcement action is "clearly analogous to the 18th-century action in debt," which would have been tried in a court of law. *Tull*, 481 U.S. at 420. Actions for securities fraud also fall within the Seventh Amendment's ambit. As the Fifth Circuit recently explained, "[s]ecurities fraud actions are not new actions unknown to the common law." *Jarkesy*, 34 F.4th at 455. "Common-law courts have heard fraud actions for centuries, even actions brought by the government for fines." *Id.* And "the Supreme Court has often looked to common-law principles to interpret fraud and misrepresentation under securities

statutes." *Id.* (citations omitted). "[F]raud actions under the securities statutes echo actions that historically have been available under the common law[,]" *id.*, such that the Seventh Amendment applies.

SEC enforcement actions that seek civil penalties and/or allege fraud fall within the Seventh Amendment's protection. *See id.* at 457 (right to jury trial to adjudicate "the facts underlying any potential fraud liabilities that justifies penalties"); *SEC v. Jensen*, 835 F.3d 1100, 1106 (9th Cir. 2016) (constitutional right to a jury trial in SEC enforcement action); *SEC v. Smyth*, 420 F.3d 1225, 1233 n.14 (11th Cir. 2005) (noting Seventh Amendment right to a trial by jury in SEC actions); *SEC v. Lipson*, 278 F.3d 656, 662 (7th Cir. 2002) (jury trial permitted in case seeking legal and equitable relief).

B. The Exchange Act's Three-Tier Penalty Scheme Requires Factual Determinations to Establish Liability for Each Penalty Tier

When the Seventh Amendment applies to the imposition of penalties, a jury is not necessarily required to determine the measure of such damages. *Tull*, 481 U.S. at 426. Congress may "fix the [amount] of civil penalties" and may "delegate that determination to trial judges" consistent with the Seventh Amendment. *Id.* at 427. This is because the jury determination of facts is not a "necessary" component of a fixed damage assessment. *Id.* at 426. But under the Exchange Act's three-tier penalty scheme, courts may impose civil penalties only "upon a proper showing" by SEC. 15 U.S.C. § 78u(d)(3)(A)(i). The penalty amount "is determined by the court in light

of the facts and circumstances." 15 U.S.C. § 78u(d)(3)(B)(i). The factfinder must make at least two inquiries. The first is how many violations occurred. *Id.* (penalties may be assessed "[f]or each violation"). The second is whether "the gross amount of pecuniary gain to [a] defendant as a result of the violation" exceeded the base penalty set by Exchange Act Section 21(d). Then, any upward departure from the base penalty to a tier two or tier three penalty requires additional findings. Tier two penalties require an additional determination that the violation "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. § 78u(d)(3)(B)(ii). Tier three penalties require the same factual determinations necessary to establish tier two penalties *plus* a determination that the defendant's conduct "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." 15 U.S.C. § 78u(d)(3)(B)(iii); Matthew T. Martens & Troy A. Paredes, *The Scope of the Jury Trial Right in SEC Enforcement Actions*, 71 N.Y.U. ANN. SURV. AM. L. 147, 176-77 (2015) (text of penalty statute "sound[s] in both reliance and causation" and requires proof of a "causal connection," which are additional factual determinations that must be made by the factfinder).

When the statutory assessment of penalties requires factual determinations that can increase the penalty tier (and the penalty amount), those determinations *must* be made by a jury. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (in the context

of the Sixth Amendment "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury"); *see also Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 353 (1998) ("The right to a jury trial includes the right to have a jury determine the *amount* of statutory damages, if any, awarded to the copyright owner."). The Seventh Amendment's "aim is not to preserve mere matters of form and procedure, but substance of right. This requires that questions of fact in common-law actions shall be settled by a jury, and that the court shall not assume, directly or indirectly, to take from the jury or to itself such prerogative." *Walker v. New Mexico & S. P. R. Co.*, 165 U.S. 593, 596 (1897).

Appellants were entitled to a jury determination of the facts necessary to establish liability for any increase in the civil penalty tier beyond the base tier-one penalty of $7,500 (Eldred and Dilley) and $80,000 (Spartan and Island) (as adjusted for inflation as of the time of the alleged violations). The court erred and deprived them of that constitutionally protected right when it denied Appellants' motion, Doc 159, and ordered tier two civil penalties of $150,000 each for Eldred and Dilley, and $250,000 each for Spartan and Island, Doc 297 - Pg 37-38. The number of separate violations SEC claimed and the district court found during the remedies phase makes this error clear. The court erroneously stated that Appellants did not "dispute" that SEC sought assessment of penalties "for three 'violations' against Dilley, two violations against Eldred, and one violation against the corporate Defendants." Doc

297 - Pg 37. Appellants consistently asserted that *no* violations occurred and were under no obligation to squabble with SEC about how thinly the court should slice up and count violations. *Cf.* Doc 303 - Pg 95-96 (SEC arguing that it could have requested more violations based on the alleged "19 separate misreps" but *chose* to count only one violation for each issuer). The law does not allow SEC to argue like scholastics about how many violations can dance on the head of an alleged pin. Such arbitrary determinations about the number of violations that may have occurred is untethered from the jury's verdict and highlights why the jury must make these factual determinations.

The judgment also runs headlong into the rule of lenity, which "requires courts to construe ambiguous criminal statutes narrowly in favor of the accused." *U.S. v. Wright*, 607 F.3d 708, 716 (11th Cir. 2010) (Pryor, J., concurring); *see id.* at 716-17 (discussing how the rule of lenity serves the constitutional principles of due process and separation of powers). Because the fraud provisions at issue here can be prosecuted criminally, the rule of lenity attaches to this action. *See Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 16 (2011) ("[W]e have said that the rule of lenity can apply when a statute with criminal sanctions is applied in a noncriminal context."). The number of violations, if ambiguous, should be subject to lenity, not the whims of SEC or the court.

V. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT ORDERED REMEDIES BASED ON CONDUCT THAT THE JURY FOUND DID NOT VIOLATE THE LAW

Courts have found that due process considerations preclude the court from ordering remedies based upon conduct that the jury found non-culpable. *Cf. People v. Beck*, 504 Mich. 605, 629 (2019) ("due process bars sentencing courts from" relying on acquitted conduct in sentencing); *State v. Marley*, 321 N.C. 415, 425 (1988) ("due process and fundamental fairness precluded the trial court" from increasing sentence based on acquitted conduct). In the criminal context, federal courts may consider acquitted conduct "so long as that conduct has been proved by a preponderance of the evidence." *U.S. v. Watts*, 519 U.S. 148, 157 (1997); *U.S. v. Scott*, 798 F. App'x 391, 394 (11th Cir. 2019).

But the same is not true in the civil context, where the jury's determinations are already made under a preponderance of the evidence standard. *See* Doc 249 at 16 (Jury Instruction 12). When the jury found that Appellants did not aid or abet violations of the securities laws and did not participate in schemes to defraud, the district court was not free to consider that unproven conduct when imposing penalties. *See* Doc 250; Doc 256. To hold otherwise would permit the district court to penalize Appellants and order remedies based on conduct SEC could not prove and the jury found did not violate the law, all in violation of their due process rights.

But the district court did just that and abused its discretion by doing so. In determining the disgorgement amount as to Island and the civil penalty amounts as to all Appellants, the court impermissibly considered the aiding and abetting and scheme liability counts that the jury rejected. Regarding the civil penalty determinations, the court "considered Defendants' roles in the overall scheme" and "the fact that [Form 211 application] information was originally provided by third parties (at the behest of Mirman and Rose)." Doc 297 - Pg 37. And, in ordering Island to pay disgorgement, the court determined that "Island collected fees from 14 identified issuers as part of scheme[,]" Doc 297 - Pg 19, and that Island was "a key player in a scheme to put dubious equities on the market[,]" Doc 297 - Pg 25. Relying on theories of liability that the jury rejected to fashion remedies is impermissible and violates Appellants' due process rights.

On this ground alone the Court should reverse and remand to the district court with instructions to recalculate the civil penalties and disgorgement based solely on what the jury indisputably found.

VI. THE COURT ERRED WHEN IT ORDERED ISLAND TO PAY DISGORGEMENT

The SEC's request for disgorgement was a thinly veiled attempt to extract penalties for the aiding and abetting and scheme liability counts the jury explicitly rejected. The district court committed multiple legal errors when it ordered Island to pay disgorgement based on its non-existent role in a scheme the jury rejected. Doc

297 - Pg 15, 25. As a matter of law, disgorgement that is paid to the Treasury is not "for the benefit of investors" as required by the Exchange Act. There is no causal connection between the alleged ill-gotten gains and Island's conduct. SEC failed to establish a "reasonable approximation" of the alleged unjust gain, and the court's application of the burden-shifting framework under *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004), was erroneous.

A. Disgorgement Paid into the Treasury Is Not 'For the Benefit of Investors' as Required by the Exchange Act

1. Principles of Statutory Construction Require 15 U.S.C. § 78u(d)(5) and § 78u(d)(7) to Be Read Together

As the parties and the district court recognized, it remains unsettled whether SEC's practice of depositing disgorged funds into the Treasury is permissible where it is infeasible to distribute the funds to investors. *Liu v. SEC*, 140 S. Ct. 1936, 1948 (2020). This is because Exchange Act Section 21(d) authorizes equitable relief only when "appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5). "The Eleventh Circuit has yet to issue any guidance on this topic." Doc 297 - Pg 24. That question is squarely presented here. But the question was further complicated by post-*Liu* congressional amendments to Section 78u, which, among other things, codified disgorgement as a remedy available in SEC enforcement cases. *See* 15

U.S.C. § 78u(d)(7).[7] The district court determined that disgorgement under Section 78u(d)(7) is a remedy that sounds in equity, yet held "that it may order disgorgement and direct that disgorged funds be sent to the Treasury under Section 78u(d)(7)."[8] *See* Doc 297 - Pg 23, 25.

That holding is in substantial tension with a recent Supreme Court holding that SEC disgorgement awards constitute permissible equitable relief under Section 78u(d)(5) only where they "do[] not exceed a wrongdoer's net profits and [are] awarded for victims." *Liu,* 140 S. Ct. at 1940. As the *Liu* Court noted, Section 78u(d)(5) "*restricts* equitable relief to that which 'may be appropriate or necessary for the benefit of investors.'" *Id.* at 1947 (emphasis added). This investor-benefit restriction should also apply to disgorgement ordered under Section 78u(d)(7).

Despite the district court's decision to the contrary, Doc 297 - Pg 21, 23, a statute's subsections should not be read in isolation. *In re Wild*, 994 F.3d 1244, 1272

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[7] The amendments comprised two pages tucked belatedly into a 1,480-page defense authorization bill passed on New Year's day in 2021. *See generally* 2021 NDAA, Pub. L. No. 116-283, 134 Stat. 3388 (2021).

[8] While SEC's remedies motion was pending, the Fifth Circuit determined that "[a]s amended, Section 78u(d) authorizes disgorgement in a legal—not equitable—sense." *SEC v. Hallam*, 42 F.4th 316, 338 (5th Cir. 2022). But that determination leads to distinct issues in SEC enforcement actions. For example, if Section 78u(d) created legal disgorgement, as opposed to equitable disgorgement, then SEC is not entitled to collect prejudgment interest absent congressional authority to do so because SEC is a "creature[] of statute" and "possess[es] only the authority that Congress has provided." *NFIB v. OSHA*, 142 S. Ct. 661, 665 (2022).

(11th Cir. 2021) (Pryor, J., concurring). This Court has long recognized that proper statutory interpretation considers the context of the entire statute as assisted by the canons of statutory construction. *Edison v. Douberly*, 604 F.3d 1307, 1310 (11th Cir. 2010). Statutory terms are not read in "isolation" but rather statutory context. *Id.* Statutes should be read as a whole. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 24, at 167 (West 2012) (explaining that a "judicial interpreter" is called on "to consider the entire text, in view of its structure and of the physical and logical relation of its many parts"). "Because statutory construction is a 'holistic endeavor,'" courts must interpret statutory provisions, like Section 78u(d)(7), in the context of the entire statute. *Black Warrior Riverkeeper, Inc. v. Black Warrior Mins., Inc.*, 734 F.3d 1297, 1302 (11th Cir. 2013). "The Supreme Court has instructed that the 'fundamental canon of statutory construction [is] that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme' and that a court should 'fit, if possible, all parts into a harmonious whole.'" *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33 (2000)). Relatedly, "a court should also avoid interpreting a provision in a way that would render other provisions of the statute superfluous." *Black Warrior*, 734 F.3d at 1303; *see also* Scalia & Garner, *supra*, § 26, 174 (the "surplusage canon" holds that "[i]f possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*). None should be

ignored. None should needlessly be given an interpretation that is to duplicate another provision or to have no consequence.")).

Legislative history reinforces this view. That history shows that the purpose of adding Section 78u(d)(7) was to make explicit that which had previously been only implicit—*i.e.*, that disgorgement is an available equitable remedy in SEC enforcement actions under Section 78u(d)(5). *Cf.* 165 Cong. Rec. H8931 (daily ed. Nov. 18, 2019) (statement of Rep. McAdams).

To reach a harmonious whole reading of Section 78u(d)(7), that section must be read in context with the statute, specifically Section 78u(d)(5). Disgorgement has historically been considered an equitable remedy. *See SEC v. Levin*, 849 F.3d 995, 1006 (11th Cir. 2017). And, under Section 78u(d)(5), equitable remedies must be "appropriate or necessary" and "for the benefit of investors." 15 U.S.C. § 78u(d)(5). Disgorgement sought under Section 78u(d)(7) must also be "appropriate or necessary" and "for the benefit of investors" because it is an equitable remedy within the meaning of Section 78u(d)(5). The court's reading of the statute renders the investor-benefit requirement for equitable relief superfluous by permitting disgorged monies to be paid to the *Treasury* instead of harmed investors notwithstanding the

Supreme Court's contrary holding in *Liu*.[9]

2. Depositing Disgorged Funds into the Treasury Is Incompatible with Traditional Notions of Equity

The district court's disgorgement award contravenes traditional equitable principles because the award does not benefit investors. "Equity never, under any circumstances, lends its aid to enforce a forfeiture or penalty, or anything in the nature of either." *Marshall v. City of Vicksburg*, 82 U.S. 146, 149 (1872). Yet just as the Supreme Court recognized in *Kokesh*, the district court's disgorgement order "bears all the hallmarks of a penalty: It is imposed as a consequence of violating public law and it is intended to deter, not to compensate." 581 U.S. at 465. Stated another way, it "'go[es] beyond compensation, [is] intended to punish, and label[s] [Appellants] wrongdoers' as a consequence of violating public laws." *Id.* at 467 (quoting *Gabelli*, 568 U.S. at 451-452).

Disgorgement was ordered as a consequence of the alleged violation of the Exchange Act. It was also intended to deter future violations of the securities laws. SEC admitted as much at the evidentiary hearing, arguing that it was seeking disgorgement for its "deterrent effect" and that enforcement of the securities laws would be undermined if it was not awarded. Doc 303 - Pg 86. Because the disgorged

[9] The parties stipulated that a distribution to investors was "infeasible" but did not agree why that was so. Doc 287 - Pg 1. Appellants maintain no investors were harmed.

funds are to be paid to the Treasury rather than to harmed investors, the disgorgement order is not compensatory and does not benefit any affected investors. *See Kokesh*, 581 U.S. at 462. Still, the district court determined it would be more "equitable" to divert the disgorged funds to the Treasury than to let the funds remain with Island, who the court improperly described as a "key player in a scheme"—one that the jury rejected. Doc 297 - Pg 25. It is hard to see how the court's determination was not meant to penalize Island.

Another factual oddity renders payment of the disgorged funds into the Treasury improper here. All funds paid to Island came from the relevant issuers of stock, who were proven at trial to be fraudsters. Doc 194 - Pg 39, 43. But equity requires clean hands, and this is particularly true in cases affecting the public interest. *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 815-16 (1945) (dismissing patent case because of lack of clean hands). The application of unclean hands in equity is within the sound discretion of the trial court. *Shatel Corp. v. Mao Ta Lumber & Yacht Co.*, 697 F.2d 1352, 1355 (11th Cir. 1983). At trial, SEC put on witness after issuer witness who admitted to lying to Appellants multiple times over a long period. *See*, *e.g.*, Doc 186 - Pg 94. SEC then sought recovery of these fraudsters' funds under the guise of disgorgement and the court granted that request. On any balance of equities, Appellants are less culpable than everyone who paid any money to Island. The jury did not find *any* defendant acted in concert with these

fraudulent issuers—and accordingly it rejected the scheme liability counts—and such a view would not accord with any facts adduced at trial. Hence, it is not equitable to require parties who had no knowledge of a fraud to "disgorge" funds they received from the deceivers. That the district court ordered otherwise was an abuse of discretion.

B. Disgorgement Is Not Appropriate Because There Is No Causal Connection Between the Alleged Ill-Gotten Gains and Island's Conduct

A "court may exercise its equitable power only over property *causally* related to the wrongdoing." *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989) (emphasis added). There must be some nexus between the conduct for which liability is found and the monies ordered to be disgorged. SEC sought disgorgement of fees paid to Island by 14 Mirman/Rose issuers whom SEC alleged were part of a scheme. *See* Doc 297 - Pg 19. SEC introduced various Island statements for these issuers and sought a disgorgement amount equal to all the fees collected in those statements through the issuers' bulk transfer dates. Doc 297 - Pg 27-28. But the jury found no scheme when it rejected those theories at trial. *See* Doc 250; Doc 256. There was no nexus between the violation found by the jury and the fees Island received and was ordered to disgorge. As evidenced by Jury Instruction 19, Island's liability could only have been premised on misstatements or omissions regarding the registration status of the issuer's shares. But the jury also rejected that theory when it determined that Island did not sell unregistered securities. Doc 250 - Pg 6 (Count 14); Doc 256

- Pg 4. The court was therefore without power to order disgorgement of the fees paid to Island because there was no proof that those fees were causally related to the Rule 10b-5(b) violation found by the jury.

C. SEC Failed to Establish a 'Reasonable Approximation' of the Alleged Ill-Gotten Gains and the Court Erroneously Shifted the Burden to Appellants to Disprove That Calculation

When seeking disgorgement, SEC must "produc[e] a reasonable approximation of a defendant's ill-gotten gains." *Calvo*, 378 F.3d at 1217. But that does not mean SEC is free to put together *any* calculation, claim it is reasonable, and then shift the burden to Island. *See FTC v. Vylah Tec LLC*, 378 F. Supp. 3d 1134, 1141 (M.D. Fla. 2019) (finding disgorgement calculation unreasonable when government failed to use the best records available, the calculation was a moving target, and non-party funds were included). The initial inquiry is whether SEC's calculation is reasonable based on the facts and circumstances underlying the disgorgement request and how it is calculated. SEC's disgorgement calculation was rife with errors. These included unsubstantiated fees and payments, fees paid after the bulk transfer date, and a failure to account for legitimate business expenses as the Supreme Court required in *Liu*. *See* Doc 297 - Pg 30-31 (and accompanying notes). Because of these errors, SEC's disgorgement calculation was unreasonable, and the court abused its discretion when it shifted the burden to Appellants to rebut that calculation.

The district court compounded its error by applying a presumption against Island purportedly to account for the risk of uncertainty in calculating the proper disgorgement amount. But any presumption against Island based on uncertainty should apply only if, and only after, the burden of proof has shifted to it, not before. *See FTC v. Verity Int'l, Ltd.*, 443 F.3d 48, 69 (2d Cir. 2006) ("This presumption against the wrongdoer should not have been invoked without first establishing a reasonable approximation of unjust gain because this presumption applies only in the second stage of the burden-shifting framework.").

The court committed legal error when it misapplied the burden-shifting framework. *See Calvo*, 378 F.3d at 1217. As a matter of context, the burden-shifting framework was developed in response to the "near-impossible task" of "separating legal from illegal profits" in the insider training context due to the expensive, imperfect, imprecise, and speculative nature of econometric modelling necessary to determine the amount of ill-gotten trading gains. *See First City Fin. Corp.*, 890 F.2d at 1231. Because of that, the D.C. Circuit was reluctant to impose "a strict burden" on the government and instead determined that "the risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." *Id.* 1232. In insider trading cases the illegal conduct and the cause of the uncertainty are merged. The risk of uncertainty should fall on the defendant only when the defendant's "illegal conduct [is what] created the uncertainty." *Verity Int'l, Ltd.*, 443 F.3d at 69.

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But Island's conduct here created no records uncertainty, nor did SEC allege or the court find that it did. The court erred in shifting the burden to Island and ordering disgorgement, and reversal is warranted.

VII. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER DILLEY'S, SPARTAN'S, AND ISLAND'S ABILITY TO PAY THE PENALTIES ORDERED

The court did not take into account the financial circumstances of any Appellant in determining the civil penalties ordered.

Courts weigh multiple discretionary factors to determine whether a civil penalty is warranted and, if so, the appropriate penalty amount. *See, e.g.*, *SEC v. Sargent*, 329 F.3d 34, 41-42 (1st Cir. 2003); *SEC v. Huff*, 758 F. Supp. 2d 1288, 1364 (S.D. Fla. 2010). A defendant's ability to pay is "at most … one factor to be considered in imposing a penalty." *Warren*, 534 F.3d at 1370. A court abuses its discretion "when a relevant factor that should have been given significant weight is not considered." *Ameritas Variable Life Ins. Co.*, 411 F.3d at 1330.

While this Court has previously stated that "ability to pay does not merit significant weight in comparison to the other equities[,]" *Warren*, 534 F.3d at 1370, that view cannot be squared with the Eighth Amendment's prohibition of "excessive fines" and the clause's meaning dating back to before the founding. *Timbs v. Indiana*, 139 S. Ct. 682, 695 (2019) (Thomas, J., concurring). Tracing its roots to the Magna Charta, the Excessive Fines Clause incorporates the principle of *salvo*

contenemento suo, which is translated as "'saving his contenement,' or livelihood." Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 HASTINGS CONST. L.Q. 833, 835 (2013). The *salvo contenemento suo* principle provides "an additional limiting principle linking the penalty imposed to the offender's economic status and circumstances." *Id.* at 836. "[A]t common law, the inquiry into excessiveness hinged on an analysis of an individual defendant with individual characteristics and an individual crime." *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1334 (11th Cir. 2021) (Tjoflat, J., concurring in part and dissenting in part); *see supra*, Sec. IV.A. (discussing common law nature of SEC fraud and penalty actions). As such, ability to pay is a factor that should be given significant weight, as not doing so violates the Excessive Fines Clause of the Eighth Amendment. Failing to consider ability to pay constitutes abuse of discretion. *See Ameritas Variable Life Ins. Co.*, 411 F.3d at 1330.

Neither Spartan nor Island has the assets, resources, nor future business plans that would enable them to pay the court-ordered civil penalties. Doc 273-1 - Pg 1. Spartan and Island are defunct companies maintained only for administrative purposes. Doc 299- Pg 2, 3; Doc 302 - Pg 60-61, 64-65

Dilley is also unable to pay the civil penalty ordered against him. Doc 298 - Pg 3. Around the time SEC filed this action, Dilley suffered "an economic perfect

storm" consisting of personal, medical, and family financial obligations. Doc 303 - Pg 41; Doc 303 - Pg 20, 49. Dilley still has a negative net worth and no significant assets. *Cf.* Doc 273-2 - Pg 2.

While the court stated that ability to pay is a factor, it failed to consider it. *Compare* Doc 297 - Pg 34 (listing factors) *with* Doc 297 - Pg 37 (discussing culpability and mentioning generalized consideration of "pertinent facts and circumstances"). This failure is manifest by the court's imposition of the same penalty amount against Dilley as it imposed against Eldred, who did not claim inability to pay. Doc 297 - Pg 37-38.

The court abused its discretion because ability to pay is a relevant factor that should have been given significant weight but was not. Reversal and remand are warranted, so that Dilley's, Spartan's, and Island's ability to pay may be considered.

CONCLUSION

The Court should reverse the district court's judgment against Eldred, Dilley, Spartan, and Island and remand for entry of judgment in Appellants' favor. In the event the Court finds error only in the district court's failure to allow the jury to determine the predicate facts necessary to justify the civil penalties it imposed, the Court should remand with instructions to enter penalties not to exceed $7,500 for Eldred and Dilley and not to exceed $80,000 for Spartan and Island.

Respectfully submitted, this 17th day of January, 2023, by:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limits under Fed. R. App. P. 28(a)(10) and typeface and typestyle requirements under Fed. R. App. P. 32(a)(5)-(6) and 11th Cir. R. 28-1(m) because this brief contain 12,978 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f), prepared in proportionally spaced typeface using Microsoft Word for Office365 Times New Roman 14-point font.

Dated: January 17, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2023, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system which sent notification of such filing to all counsel of record.

Dated: January 17, 2023

/s/ Kara M. Rollins
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ATTACHMENT 4

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 8:19-cv-448-VMC-CPT

SPARTAN SECURITIES GROUP, LTD,
ISLAND CAPITAL MANAGEMENT,
CARL DILLEY, and MICAH ELDRED,

Defendants.

_____/

ORDER

Before the Court is the Motion for Remedies filed by Plaintiff Securities and Exchange Commission ("SEC") on April 13, 2022. (Doc. # 270). Defendants Spartan Securities Group, Ltd., Island Capital Management, Carl E. Dilley, and Micah J. Eldred (collectively, "Defendants") filed a response in opposition on May 23, 2022. (Doc. # 273). The SEC filed a reply on July 12, 2022. (Doc. # 284). The Court thereafter held an evidentiary hearing and oral argument on this matter, and it solicited supplemental materials from the parties. Following careful consideration, and for the reasons that follow, the Motion is granted in part and denied in part.

I. Background

Following a 12-day trial in July 2021, a jury handed down a verdict in Defendants' favor on 13 of the 14 counts brought by the SEC. (Doc. # 250). However, the jury rendered a verdict in favor

of the SEC as to Count Six of the complaint, finding that Spartan, Island, Dilley, and Eldred made materially misleading statements or omissions in connection with the purchase or sale of securities, in violation of Section 10(b) and Rule 10b-5(b) of the Exchange Act. (Id.). Defendants filed a renewed motion for judgment as a matter of law, which this Court denied. (Doc. # 263).

The SEC now seeks certain remedies against Defendants, including an injunction, penny stock bars, and monetary relief consisting of disgorgement and civil penalties. (Doc. # 270). Defendants have responded, and the Motion is ripe for review.

II. Legal Standard

Congress has authorized the SEC to enforce the Securities Act of 1933 and the Securities Exchange Act of 1934 and to punish securities fraud through administrative and civil proceedings. Liu v. SEC, 140 S. Ct. 1936, 1940 (2020). Once a court determines that a federal securities law violation has occurred, it has broad equitable powers to fashion appropriate remedies. SEC v. Lorin, 76 F.3d 458, 461-62 (2d Cir. 1996).

III. Discussion

A. Injunctive Relief

The Exchange Act authorizes the SEC to seek an injunction "[w]henever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter." 15 U.S.C. § 78u(d)(1).

"The SEC is entitled to injunctive relief when it establishes (1) a prima facie case of previous violations of federal securities laws, and (2) a reasonable likelihood that the wrong will be repeated." SEC v. Calvo, 378 F.3d 1211, 1216 (11th Cir. 2004).

The jury's verdict against Defendants sufficiently meets the requirement of a previous violation, leaving the issue of whether there is a "reasonable likelihood that the wrong will be repeated." The SEC bears the burden of proving that a recurrent violation is reasonably likely to occur and, in the Eleventh Circuit, the "mere fact of past violations" is insufficient to establish the propriety of an injunction. SEC v. Yun, 148 F. Supp. 2d 1287, 1293 (M.D. Fla. 2001) (citing SEC v. Blatt, 583 F.2d 1325, 1334 (5th Cir. 1978)). In determining whether to grant injunctive relief, factors to consider are: "[1] [the] egregiousness of the defendant's actions, [2] the isolated or recurrent nature of the infraction, [3] the degree of scienter involved, [4] the sincerity of the defendant's assurances against future violations, [5] the defendant's recognition of the wrongful nature of the conduct, and [6] the likelihood that the defendant's occupation will present opportunities for future violations." Calvo, 378 F.3d at 1216.

The SEC seeks permanent injunctive relief against all four Defendants. Defendants claim that, under the Calvo factors, an injunction is not warranted in this case. (Doc. # 273 at 3-8). The

Court must first, then, determine whether an injunction is appropriate.

First, as to the egregiousness of Defendant's actions, the SEC presented evidence at trial that Defendants submitted Form 211s to FINRA for multiple issuers containing information that Defendants knew or reasonably should have known was false, made materially false statements or omissions in connection with clearance from the Depository Trust Company, and/or processed bulk transfers in instances where shares were restricted or their actions were otherwise improper. In short, the Court agrees with the SEC that, taking the evidence in the light most favorable to the jury's verdict, the evidence demonstrated that Defendants abused their "gatekeeper" role by enabling the purchase and sale of securities on the public market that should have been barred or more carefully vetted by FINRA. This factor leans in favor of an injunction.

Second, as to the isolated or recurrent nature of the infraction, the SEC calls the Defendants' conduct "far-reaching," arguing that for more than five years, they played "critical roles in bringing at least 19 separate blank check companies public under false pretenses." Defendants argue that the SEC only presented evidence of 19 problematic securities offerings, out of the over 1,200-1,500 Form 211 applications Defendants filed , or about 1% of the applications filed during the relevant time. The Court

believes both parties make valid points, and this factor is neutral.

Third, as to the degree of scienter involved, based on the jury's verdict, Defendants had to make the material misrepresentations or omissions at issue with at least severe recklessness. Scienter weighs in favor of an injunction.

Fourth, as to the sincerity of Defendant's assurances against future violations and Defendants' recognition of the wrongful nature of their conduct, Defendants have not expressed any remorse for their actions. But they rightly point out that their right to defend themselves should not be held against them. While the Court respects Defendants' right to raise a vigorous defense, the fact remains that neither individual Defendant has provided the Court with specific assurances against future violations, has not admitted any wrongful conduct, and has not shown any remorse. This factor weighs in favor of an injunction.

Finally, the Court turns to the likelihood that Defendants' occupation(s) will present opportunities for future violations. The parties presented evidence on this point at the hearing. Mr. Eldred, who is 54 years old, testified that he is no longer registered as a securities broker with the SEC or FINRA. He voluntarily withdrew his licenses with the regulators in 2019. Mr. Eldred explained that FINRA requires brokers to have a "sponsoring organization," so that to reactivate his FINRA license, he would

need to first find an organization willing to sponsor him and then FINRA would need to re-grant his licensure. He believes that, based on his convictions in this case, the likelihood of this happening is very slim.

Currently, Mr. Eldred is the CEO and on the Board of Directors of Endurance Exploration Group, a shipwreck recovery and salvage company. He does not draw a salary from Endurance, although he could receive dividends or shares of the company's profits, should the company do well. Mr. Eldred also works as a non-lawyer partner in a small law firm, in which he provides business development services and "expertise," including securities expertise, to the firm's clients.

Mr. Eldred also elaborated on the current status of Spartan and Island. Island went out of business in 2020 and is not currently operating. He explained that it shut down due to this litigation – clients left, and the firm became unprofitable. Island is no longer registered with the relevant regulators and, to resume operations, it would have to re-register with the SEC and the DTC. Mr. Eldred testified that, upon closing, Island sold its book of business and Eldred has drawn continuing payments from that sale – he received approximately $100,000 in the past year, and there are three years left on the sales agreement.

Spartan is also no longer in operation. Mr. Eldred explained that, in June 2019, Spartan lost more than $15 million in one day

due to the actions of a rogue employee. Spartan initiated a FINRA arbitration action against the employee and received a $5.4 million judgment in its favor. However, under an agreement they made with another firm who paid their legal expenses, if the employee were to ever pay the judgment, the firm would be reimbursed first. The employee has thus far not paid any amount of the judgment, and Mr. Eldred does not believe he has the means to do so.

Pursuant to SEC regulations, Spartan was required to wind down and cannot operate because of its negative resources. Thus, to restart operations, Spartan would need to recover all of its lost capital and also receive regulatory approval from the SEC and FINRA. Mr. Eldred stated that he does not believe FINRA would allow Spartan to re-register. Mr. Eldred explained that, although he personally had no prior disciplinary history with securities regulators, FINRA had filed 10 actions against Spartan over the years, fining them close to $400,000. The Court finds Mr. Eldred's testimony credible with respect to Spartan and Island.

Mr. Dilley, who is 67 years old, concurred with Mr. Eldred's statements about what would be required for Island, Spartan, or himself as an individual broker to re-enter the securities business. Given these hurdles, he similarly believes it highly unlikely that Island or Spartan could resume operations. Mr. Dilley voluntarily gave up his securities licenses in 2014. Mr. Dilley retired from Island in January 2018 but remained a consultant for

the company. Mr. Dilley is also involved with Endurance, the shipwreck salvage company, as the COO and a member of the Board of Directors. He receives *de minimus* amounts for overseeing that company's accounting, but, like Mr. Eldred, could plausibly receive profit sharing or dividends from the company. Mr. Dilley receives income from Social Security, a Canadian pension, work from his repair shop, and "limited securities consulting." He also has a real estate license but testified that he has not yet earned any money in the real estate business. He is also the owner or part-owner of certain companies that do not generate much, if any, income.

1. Injunction against Spartan

The Court is persuaded that the economic, logistical, and regulatory impediments to Spartan resuming operations make it unlikely that it will ever re-enter the securities business. The Court is mindful that "[t]he purpose of injunctive relief is, after all, not to punish but to deter future violations." SEC v. Advance Growth Capital, Corp., 470 F.2d 40, 54 (7th Cir. 1972). The SEC argues that Spartan could plausibly resurrect operations in the securities realm, but the standard the SEC must show is a "*reasonable* likelihood that the wrong will be repeated." Calvo, 378 F.3d at 1216 (emphasis added). They have not met that standard here, and the Court will not issue an injunction against Spartan because that entity is basically defunct with little to no chance

of ever resuming operations. See SEC v. Scott, 565 F. Supp. 1513, 1537 (S.D.N.Y. 1983) (refusing to grant injunctive relief where, based on the record, the court was "unable to find a reasonable likelihood that, absent an injunction, [the defendant] would be likely to commit future violations of the securities laws"); see also SEC v. Blockvest, LLC, No. 18CV2287-GPB(BLM), 2018 WL 6181408, at *8 (S.D. Cal. Nov. 27, 2018), on reconsideration, No. 18CV2287-GPB(BLM), 2019 WL 625163 (S.D. Cal. Feb. 14, 2019) (refusing to grant preliminary injunction where defendant agreed to stop his challenged actions and thus, SEC had not demonstrated a reasonable likelihood that the wrong will be repeated). Finally, the Court also notes that Spartan will be subject to a penny stock bar, as explained further below, which is appropriate because its business (and the misconduct at issue here) centered on penny stocks.

2. Injunction against Island

Testimony from the evidentiary hearing showed that Island, like Spartan, is no longer operational. However, there are two important differences between the companies. First, while Island may be de-registered with regulators, it does not face the same capitalization concerns that Spartan does if it wished to resume operations. Second, as a transfer agent, the SEC is not seeking a penny stock bar against Island, a measure that the Court believes to be adequate with respect to Spartan. For these reasons, the Court will issue an injunction against Island. Furthermore, as a

corporate defendant, the Court need not consider impacts upon livelihood or credibility like it does with individual defendants. The Court sees no reason why the injunctive relief granted here cannot be permanent. Furthermore, the Court finds the SEC's proposed injunctive language, as revised, is sufficiently specific, and the Court adopts it here:

> IT IS ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) promulgated thereunder [17 C.F.R. § 240.10b-5(b)], 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:
>
> 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, regarding:
>
> i. whether an issuer is a shell or blank check company; or
> ii. information submitted to the Depository Trust Company ("DTC") or its participants when seeking DTC eligibility for an issuer; or
> iii. the designation of securities as free trading; or
> iv. the issuance and transfer of securities, including by means of stock certificates without restrictive legends.

(Doc. # 296-1).

3. Injunctions against Mr. Dilley and Mr. Eldred

The Court will issue injunctions against Mr. Dilley and Mr. Eldred. Looking at the totality of the facts and circumstances, including the fact that both individuals still have at least

tangential contacts with the securities industry (Mr. Dilley with his "limited securities consulting" and Mr. Eldred in his advisory role at the law firm), there is a reasonable likelihood that the wrong could be repeated. Both men have been involved with the securities industry for most of their lives. Both are involved or have been involved in multiple businesses and are likely still well connected in the industry. Furthermore, while the Court does not penalize them for defending this case, neither man has given adequate assurances against future misconduct, beyond (credible) doubts regarding their ability to re-enter the industry. See, e.g., SEC v. Selden, 632 F. Supp. 2d 91, 99 (D. Mass. 2009) (imposing injunction where defendant worked at a non-public company, but "should it become [a public company], Selden would once again assume the ultimate responsibility of ensuring the accuracy of the company's public statements. His abuse of such authority in the past and his refusal to accept full responsibility in this case . . . demonstrates, at the very least, a lack of adequate assurance against future misconduct.").

Here, both Mr. Dilley and Mr. Eldred are serial entrepreneurs with years of experience offering services whereby private companies can access the public markets. The Court believes there to be a reasonable likelihood that both men could attempt to leverage their knowledge of the securities business and the penny stock market and possibly repeat the wrongs for which they were

convicted. See SEC v. Miller, 744 F. Supp. 2d 1325, 1341-42 (N.D. Ga. 2010) (holding that defendant's "background as an entrepreneur and his proven ability to start a private company and take it public weighs in favor of an injunction").

However, while the SEC seeks permanent lifetime injunctions against Mr. Dilley and Mr. Eldred, the Court is not persuaded that such a drastic remedy is necessary. These violations occurred many years ago and both men have voluntarily withdrawn their securities licenses. They are also advancing in age, being 54 and 67 years old. Thus, after careful consideration, the Court believes a five-year injunction to be appropriate against Mr. Dilley and Mr. Eldred. See Miller, 744 F. Supp. 2d at 1348 (imposing a five-year bar); Selden, 632 F. Supp. 2d at 99 (imposing a two-year bar)

Having determined that a five-year injunction is appropriate, the Court must fashion relief that is fair and legal. The SEC seeks an injunction against Mr. Dilley and Mr. Eldred that states as follows:

> IT IS ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) promulgated thereunder [17 C.F.R. § 240.10b-5(b)], 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:
>
> 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, regarding:

i. initiating a quoted market in an issuer's security; or
ii. the listing and trading of an issuer's stock; or
iii. applications or submissions pursuant to Exchange Act Rule 15c2-11; or
iv. whether an issuer is a shell or blank check company; or
v. the identity of any consultants or persons in control of an issuer; or
vi. the relationships or affiliations among an issuer's shareholders and those in control of the issuer; or
vii. an issuer's plans for potential mergers or acquisitions; or
viii. an issuer's business purpose; or
ix. the nature and conduct of due diligence of an issuer; or
x. the identity of the person or entity for whom a security's quotation is being submitted, when seeking to initiate or resume quotations of an issuer's security; or
xi. whether material information, including adverse material information, exists regarding an issuer; or
xii. information submitted to the Depository Trust Company ("DTC") or its participants when seeking DTC eligibility for an issuer; or
xiii. information submitted to Financial Industry Regulatory Authority ("FINRA" when seeking to initiate or resume quotations of an issuer's security; or
xiv. the designation of securities as free trading; or
xv. the issuance and transfer of securities, including by means of stock certificates without restrictive legends.

(Doc. ## 296-3, 296-4).

Defendants argue that injunctive relief is inappropriate because the SEC seeks "obey the law" injunctions, which are not

permitted in this Circuit.[1] Another court within the Middle District of Florida has explained why "obey the law" injunctions are problematic:

> Articulating the standard of specificity that every injunction must satisfy, Rule 65(d), Federal Rules of Civil Procedure, states that "[e]very order granting an injunction . . . must: state the reasons why it issued; state its terms specifically; and describe in reasonable detail — and not by referring to the complaint or other document — the act or acts sought to be restrained or required[.]" The specificity requirement "prevent[s] uncertainty and confusion on the part of those faced with injunctive orders and . . . avoid[s] the possible founding of a contempt citation on a decree too vague to be understood." Schmidt v. Lessard, 414 U.S. 473, 476 (1974) (finding that because "an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed."). Thus, every injunction must contain "an operative command capable of 'enforcement.'" "A person enjoined by court order should only be required to look within the four corners of the injunction to determine what he must do or refrain from doing." Accordingly, "appellate courts will not countenance injunctions that merely require someone to 'obey the law.'"

SEC v. Sky Way Glob., LLC, 710 F. Supp. 2d 1274, 1277–78 (M.D. Fla. 2010) (citations omitted or altered); see also SEC v. Smyth, 420 F.3d 1225, 1233 (11th Cir. 2005) (finding that proposed injunctions that tracked the provisions of the statute or regulation was a "quintessential 'obey-the-law' injunction").

[1] At oral argument, the Court indicated that it agreed with Defendants that the SEC's first set of proposed injunctions was inadequate. While the Defendants have not proffered this argument against the SEC's revised injunctive language, the Court will still discuss it.

The Court believes that the additional, revised language proposed by the SEC takes the proposed injunctive language outside the realm of an "obey the law" injunction because it describes specific conduct that is prohibited. Certain of the language, however, remains too broad or vague. For example, the prohibition on making any misrepresentation pertaining to "the listing and trading of an issuer's stock" is very broad and not directly linked to the misconduct at issue in this case. For this reason, the Court has adopted only those prohibitions on conduct that are sufficiently specific and tied to the misconduct at issue in this case.

Accordingly, the Court will enter injunctions against Mr. Dilley and Mr. Eldred as follows:

> IT IS ORDERED, ADJUDGED, AND DECREED that Defendant is restrained and enjoined, for a period of five years from the date of this judgment, from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) promulgated thereunder [17 C.F.R. § 240.10b-5(b)], 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:
>
> 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, regarding:
>
> i. initiating a quoted market in an issuer's security; or
> ii. applications or submissions pursuant to Exchange Act Rule 15c2-11; or
> iii. whether an issuer is a shell or blank check company; or

iv. the identity of any consultants or persons in control of an issuer; or
v. an issuer's plans for potential mergers or acquisitions; or
vi. the identity of the person or entity for whom a security's quotation is being submitted, when seeking to initiate or resume quotations of an issuer's security; or
vii. information submitted to the Depository Trust Company ("DTC") or its participants when seeking DTC eligibility for an issuer; or
viii. information submitted to Financial Industry Regulatory Authority ("FINRA") when seeking to initiate or resume quotations of an issuer's security.

B. Penny Stock Bar

Courts may enter a penny stock bar "against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock[.]" 15 U.S.C. § 77t(g)(1); 15 U.S.C. § 78u(d)(6)(A). A "penny stock" generally includes an equity security bearing a price of less than five dollars. See SEC v. E-Smart Techs., Inc., 139 F. Supp. 3d 170, 182 (D.D.C. 2015). The Court may enter a penny stock bar "permanently or for such period of time as the court shall determine." 15 U.S.C. §§ 77t(g)(1), 78u(d)(6). Defendants do not dispute that the underlying scheme involved penny stocks. Nor do they dispute that they participated in an "offering of penny stock," which broadly encompasses "engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting

to induce the purchase or sale of, any penny stock." 15 U.S.C §§ 77t(g), 78u(d)(6).

The only question, then, is whether such a bar is warranted. In deciding whether to impose a penny stock bar, "the court examines the nature of the defendant's conduct and the likelihood that his occupation and experience will present further opportunities to violate the securities laws." SEC v. BIH Corp., No. 2:10-cv-577-JES-DNF, 2014 WL 7499053, * 6 (M.D. Fla. Dec. 12, 2014) (citation omitted).

Here, a penny stock bar against Mr. Dilley and Mr. Eldred is warranted. The jury convicted them of securities fraud in connection with the offering of penny stocks. There was testimony at the evidentiary hearing that the vast majority of businesses with which Mr. Eldred and Mr. Dilley involved themselves were penny stocks. In other words, a penny stock bar would prohibit Mr. Dilley and Mr. Eldred from engaging in precisely the sort of misconduct that led to their instant convictions. Both men protest that such a bar would have ramifications on innocent investors in Endurance, the shipwreck salvage company with which they are both involved. But the Court finds that the need to protect the investing public as a whole outweighs the speculative possibility that 400 investors within one company could suffer future harm.

The SEC requests a lifetime ban, but the statute permits the Court to fashion a penny stock bar "for such period of time as the

court shall determine." 15 U.S.C. §§ 77t(g)(1), 78u(d)(6). Given the age of Mr. Dilley and Mr. Eldred, the Court determines that a 10-year penny stock bar is appropriate in this case. In declining to impose a lifetime bar, the Court is mindful of the guidance offered by the Fifth Circuit: "[W]hen the [SEC] chooses to order the most drastic remedies at its disposal, it has a greater burden to show with particularity the facts and policies that support those sanctions and why less severe action would not serve to protect investors." Steadman v. SEC, 603 F.2d 1126, 1137 (5th Cir. 1979).[2] The SEC has not explained why a lifetime bar is more appropriate than a lesser sanction. Given the Commission's failure to do so here, the Court will not impose the most drastic remedy, deciding that a temporally limited bar is sufficient on these facts.

The SEC also seeks a permanent penny stock bar against Spartan. Considering that Spartan dealt in penny stocks, the Court is persuaded that a permanent ban with respect to penny stocks is in order for Spartan.

C. Disgorgement

The SEC originally sought disgorgement from Island in the amount of $147,508. (Doc. # 270 at 2). As the SEC explains it,

[2] Decisions of the Fifth Circuit rendered prior to October 1, 1981, are binding upon courts in the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

Island collected fees from 14 identified issuers as part of the scheme, and the Commission seeks to recover these "ill-gotten gains."

Currently, federal law provides for disgorgement in this way:

> (5) Equitable relief
> In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.
>
> . . .
>
> (7) Disgorgement
> In any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement.

15 U.S.C. §§ 78u(d)(5), 78u(d)(7).

The first question this Court must address is whether it may order disgorgement at all. The key case in this area is the recent Supreme Court case of Liu v. SEC, 140 S. Ct. 1936 (2020). In that case, the Supreme Court held that the SEC could seek disgorgement through its power to award "equitable relief" under 15 U.S.C. § 78u(d)(5) so long as the award did not exceed the wrongdoer's net profits and was "awarded for victims." Id. at 1940. The Court wrote that while disgorgement was at heart an equitable remedy so long as it sought to restore ill-gotten gains from the wrongdoer to his victims, the SEC had been pushing the bounds of the equitable nature of the remedy in three ways: (1) "by ordering the proceeds

of fraud to be deposited in Treasury funds instead of dispersing them to victims"; (2) "imposing joint and several disgorgement liability"; and (3) "declining to deduct even legitimate expenses from the receipts of fraud." Id. at 1946.

As to the first problem, which centers on the importance of returning ill-gotten gains to defrauded victims, the Supreme Court stressed that "the SEC's equitable, profits-based remedy must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains. To hold otherwise would render meaningless" the statute's language about the relief being "appropriate or necessary for the benefit of investors." Id. at 1948. This language "must mean something more than depriving a wrongdoer of his net profits alone, else the Court would violate the cardinal principle of interpretation that courts must give effect, if possible, to every clause and word of a statute." Id. (quotation marks and citation omitted).

Importantly for this case, the Supreme Court specifically declined to address the question of whether, when it is impossible to identify defrauded victims, disgorged funds deposited into the Treasury could comply with the requirements of the statute, writing that:

> The Government additionally suggests that the SEC's practice of depositing disgorgement funds with the Treasury may be justified where it is infeasible to distribute the collected funds to investors. It is an open question whether, and to what extent, that practice

> nevertheless satisfies the SEC's obligation to award relief "for the benefit of investors" and is consistent with the limitations of § 78u(d)(5). The parties have not identified authorities revealing what traditional equitable principles govern when, for instance, the wrongdoer's profits cannot practically be disbursed to the victims. But we need not address the issue here. The parties do not identify a specific order in this case directing any proceeds to the Treasury. If one is entered on remand, the lower courts may evaluate in the first instance whether that order would indeed be for the benefit of investors as required by § 78u(d)(5) and consistent with equitable principles.

Id. at 1948-49.

After Liu, Congress amended the securities remedies statute as part of the National Defense Authorization Act of 2021 ("NDAA"). Specifically, the NDAA added subsection (7) above to expressly permit courts to "[i]n any action or proceeding brought by the Commission under any provision of the securities laws, [] order [] disgorgement." 15 U.S.C. § 78u(d)(7). The NDAA also amended subsection (d)(3) to make it explicit that district courts have the power to impose both civil penalties and to "require disgorgement under paragraph (7) of any unjust enrichment by the person who received such unjust enrichment as a result of such violation." Id. § 78u(d)(3). Thus, Sections 78u(d)(3) and (7), as added by the NDAA, do not contain the "for the benefit of investors" language that is still included in Section 78u(d)(5). The NDAA applies to "any action or proceeding that is pending on" January 1, 2021. NDAA, Section 6501(b). This action was pending on that date.

With this background in mind, the Court turns to the parties' arguments. The SEC concedes that "distribution of the disgorged funds to harmed investors is not feasible or practical in this case" and that while Defendants' conduct harmed the capital markets at large, "identifying specific investors who were harmed or the amount by which any particular investor was harmed is not possible." (Doc. # 270 at 14). The SEC's position is that "the only alternative that is consistent with equitable principles is to send the disgorged funds to the Treasury." (Id.). The parties have stipulated that a distribution to investors of the disgorgement amount requested would be infeasible. (Doc. # 287).

The SEC argues that the recent amendments under the NDAA "provide[] the courts with greater flexibility to determine where collected disgorged funds may be distributed, because the provision omits the phrase 'for the benefit of investors.'" (Doc. # 270 at 14 n.29). The Court takes the SEC's position to be that because the newly added provisions of the NDAA are silent on the question of whether funds must be returned to investors – i.e., because subsections (d)(3) and (7) do not contain the "for the benefit of investors" language that is included in subsection (d)(5) – the SEC need not show that disgorgement is for "the benefit of investors" and, thus, disgorgement to the Treasury is appropriate.

Again, the NDAA applies to the instant action because it was pending on January 1, 2021. NDAA, Section 6501(b). Thus, 15 U.S.C. § 78u(d)(7) explicitly provides this Court the ability to order disgorgement and does not require that such disgorgement be "for the benefit of investors." The Court holds that it may order disgorgement and direct that disgorged funds be sent to the Treasury under Section 78u(d)(7).

Alternatively, the Court holds that, even if it is (post-NDAA) still required to balance the equities under Liu, the equities here weigh in favor of disgorgement to the Treasury, rather than allowing Island to retain the money. Both parties, acknowledging that this case squarely presents the "open question" in Liu, have attempted to identify which traditional equitable principles should govern here. The SEC identifies two such principles. First, it argues that distribution to the Treasury serves the foundational principle that no person should benefit from his own wrongs and that, between Island and the Treasury, it is more equitable for the money to go to Treasury. (Doc. # 270 at 14). Second, it points to the legal doctrine of *cy pres*, arguing that where identifying victims is not feasible, the money should go to the nearest possible alternative. (Id. at 15). And Defendants also identify certain equitable principles: (1) that disgorgement here is inherently a penalty on Island and that equity never "lends its aid" to enforce a penalty; and (2) that the issuers who paid

the claimed money into Island were themselves fraudsters and the doctrine of unclean hands bars repayment of these funds. (Doc. # 273 at 11-12).

The Eleventh Circuit has yet to issue any guidance on this topic. The Court's independent research demonstrates that multiple district courts have, post-Liu, allowed disgorgement awards to be directed toward the Treasury. See SEC v. Bronson, No. 12-CV-6421 (KMK), 2022 WL 1287937, at *14 (S.D.N.Y. Apr. 29, 2022) (denying petitioner's challenge to disgorgement award in Rule 60 motion where the final judgment did not identify any identifiable harmed investors to whom the disgorged profits should be returned, concluding that the disgorgement award was consistent with Liu); SEC v. Almagarby, No. 17-62255-CIV-COOKE/HUNT, 2021 WL 4461831, at *3 (S.D.N.Y. Aug. 16, 2021) (rejecting defendants' argument that disgorgement should be denied because the SEC had not identified any victims and there was no proximate causation between the defendants' securities law violation (failing to register as a dealer) and any losses from investors, writing that Supreme Court precedent does not require the SEC to "identify specific victims to whom a disgorgement award shall be distributed, or that all disgorged funds must be returned to investors, or that a disgorgement award should be limited to those funds that could be returned to investors"); SEC v. Laura, No. 18-CV-5075 (NGG)(VMS), 2020 WL 8772252, at *5 (E.D.N.Y. Dec. 30, 2020) (reasoning that

Liu "does not require that a disgorgement award reflect every individually wronged investor's private agreements. If it did, a court would need to conduct a mini-trial as to each investor before it could order disgorgement. There is no reason to believe that Liu, which confirmed the breadth of the SEC's power to seek equitable awards, also stealthily erected such a substantial barrier to SEC recovery").

In sum, a balancing of the equities favors ordering disgorgement and allowing it to be sent to the Treasury. Between the money staying with Island, a key player in a scheme to put dubious equities on the market, or a fund at the Treasury, it is more equitable to order disgorgement.

Having determined that disgorgement is appropriate in this case, the Court must next calculate the amount of the disgorgement. The parties dispute the applicable statute of limitations. Once again, the NDAA comes into play here. The previous statute of limitations for disgorgement was five years. But in the NDAA, Congress mandated that the SEC may bring a disgorgement action under the newly added subparagraph (7) within 10 years of the latest violation of the securities laws for which scienter must be established, including section 10(b). 15 U.S.C. § 78u(d)(8)(A).

Defendants argue that the SEC did not amend its complaint to plead relief under the NDAA and, thus, it is more equitable for the five-year statute of limitations (in effect when the SEC first

filed this action) to apply. Moreover, Defendants call the NDAA's retroactivity provision constitutionally "dubious" because it violates the ex post facto clause and violates Island's due process rights. These arguments are unconvincing. This case was currently pending as of January 1, 2021, and thus the NDAA applies to it. One court has applied the NDAA even to cases where a judgment was entered under the old five-year statute of limitations but was still "pending" because the Second Circuit had not yet ruled on the parties' appeal. See SEC v. Ahmed, No. 3:15CV675 (JBA), 2021 WL 2471526, at *4 (D. Conn. June 16, 2021) (citing Landgraf v. USI Film Prod., 511 U.S. 244, 273-74 (1994) ("[A] court should apply the law in effect at the time it renders its decision, even though that law was enacted after the events that gave rise to the suit.")). What's more, Defendants fail to cite any authority in support of its due process and ex post facto arguments. Cf. SEC v. Gallison, No. 15 CIV. 5456 (GBD), 2022 WL 604258 (S.D.N.Y. Mar. 1, 2022) (holding that ex post facto clause did not preclude application of the NDAA's extended statute of limitations to disgorgement claims). Accordingly, the Court will apply a 10-year statute of limitations to the disgorgement award. As explained at the evidentiary hearing, taking into account certain tolling agreements, this allows the SEC to recover fees going back to 2008.

The SEC is entitled to disgorgement upon producing "a reasonable approximation" of a defendant's ill-gotten gains.

Calvo, 378 F.3 at 1217. "Exactitude is not a requirement; so long as the measure of disgorgement is reasonable, any risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." Id. (citation and quotation marks omitted). Once the SEC has met its burden, the burden then shifts to the defendants to demonstrate that the SEC's estimate is not a reasonable approximation. Id. A defendant's current financial situation, or any hardship that disgorgement would impose, are not factors to be considered in determining disgorgement. SEC v. Warren, 534 F.3d 1368, 1370 (11th Cir. 2008). Both parties seem to agree that the "reasonable approximation" standard has survived Liu. See SEC v. Tayeh, 848 F. App'x 827, 828 (11th Cir. 2021) (unpublished) ("Disgorgement is an equitable remedy intended to prevent unjust enrichment from ill-gotten gains and must not be used punitively. The CFTC has the burden to produce a reasonable approximation of a defendant's ill-gotten gains to sustain a disgorgement amount." (citation omitted)); SEC v. Camarco, No. 19-1486, 2021 WL 5985058, at *15-16 (10th Cir. Dec. 16, 2021) (noting multiple courts across the country that continue to abide by the reasonable approximation standard).

The SEC here has compiled the amounts that Island received in fees from each of the 14 Mirman/Rose companies from the applicable statute of limitations date through the date of the issuer's bulk sale. In support, the SEC attached a declaration from Mark Dee, an

accountant with the SEC. He reviewed certain Island statements showing fees invoiced and paid by these 14 issuers. Dee then calculated a summary of the total fees paid by the issuers to Island during the relevant time frames. Dee's calculation shows the total fees collected as follows:

(1) Topaz Resources, Inc. f/k/a Kids Germ Defense Corp: $11,800
(2) MyGo Games Holding Co. f/k/a Obscene Jeans Corp.: $18,923
(3) On the Move Systems Corp.: $11,875
(4) Rainbow Coral Corp.: $13,975
(5) Angiosoma f/k/a First Titan: $8,375
(6) Neutra Corp.: $8,175
(7) Aristocrat Group Corp.: $11,208
(8) Rebel Group Inc. f/k/a Inception Technology Group Inc. f/k/a Moxian Group Holdings Inc. f/k/a First Social Networx: $10,674
(9) Global Group Enterprises Corp.: $9,779
(10) E-Waste Corp.: $9,474
(11) Codesmart Holdings Inc. f/k/a First Independence Corp.: $8,178
(12) Envoy Group: $7,500
(13) Changing Technologies Inc.: $9,400
(14) First Xeris Corp.: $8,172

TOTAL: $147,508

See (Doc. # 270-1, Ex. 2).

The analysis is not yet complete because, under Liu, courts must deduct legitimate business expenses when fashioning disgorgement awards. See Liu, 140 S. Ct. at 1950 (explaining that "courts must deduct legitimate expenses before ordering disgorgement under § 78u(d)(5)" because "[a] rule to the contrary that makes no allowance for the cost and expense of conducting a business would be inconsistent with the ordinary principles and

practice of courts of chancery" (internal alterations and quotation marks omitted)).

Following the evidentiary hearing, both parties submitted documents identifying legitimate expenses incurred by Island prior to the bulk sale date for each company. The SEC tacitly agreed to most of these expenses, and to the extent it continues to argue that such expenses should not be deducted, that position is both unfair and inconsistent with Liu. The expenses identified by the parties include fees that Island paid to third parties for courier services, printing, and regulatory fees. The Court agrees that these expenses are appropriate to deduct, and they are supported by the statements provided by the SEC.

Defendants argue for further reductions, pointing out that the fees paid into Island do not account for the business's fixed costs and overhead. That may well be, but the only evidence that Island set forth in support of this argument were Island's audited annual financial statements for 2013 and 2014, along with the testimony of Mr. Eldred that Island's profit margins were typically between 10 and 25%. But this is insufficient to show that the SEC's estimate is not a reasonable approximation and, moreover, any risk of uncertainty necessarily falls on Island. See Calvo, 378 F.3 at 1217 (explaining that "[e]xactitude is not a requirement; so long as the measure of disgorgement is reasonable, any risk of

uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty").

Accordingly, listed below are the total fees paid by each of the 14 issuers to Island up to the stipulated bulk sale dates; the legitimate business expenses incurred by Island prior to the bulk sale date; and the net fees for that account (that is, fees paid to Island less business expenses).

Issuer	**Fees Paid In**	**Expenses**	**Fees - Expenses**
Angiosoma f/k/a First Titan	8375	75	8,300
Aristocrat Group Corp.	11008[3]	1136	9,872
Changing Technologies	9400	925	8,475
E-Waste Corp.	9474	274	9,200
Global Group Enterprises	9579[4]	229	9,350
MYGO Games f/k/a Obscene Jeans	18923	8500	10,423
On the Move Systems	11675[5]	3575	8,100
Neutra Corp.	8175	75	8,100
Rainbow Coral Corp.	13975	5075	8,900
Topaz Resources f/k/a Kids Germ Defense Corp.	11800	3500[6]	8,300

[3] The Court excluded one $200 payment made after the bulk sale date.
[4] The Court excluded one $200 payment made after the bulk sale date.
[5] The Court excluded one $200 payment made after the bulk sale date.
[6] The SEC disputes whether this expense, marked on the statement as a $3,500 payment to the DTC (Depository Trust Company), should be included. While it is true that this was invoiced on April 6, 2010 (before the bulk sale date), and the next payment made was not until June 2010 (after the bulk sale date), as SEC witness

Codesmart f/k/a First Independence Corp.	8178	278	7,900
Rebel Group f/k/a First Social Networx Corp.	10674	974	9,700
Envoy Group[7]			N/A
First Xeris Group[8]	8172	272	7,900
TOTALS	**$139,408**	**$24,888**	**$114,520**

Accordingly, Island will be ordered to disgorge $114,520.00.

D. Prejudgment Interest

The SEC also seeks prejudgment interest on any disgorged amount, specifically, it seeks the IRS underpayment rate (what it would have cost to borrow money from the government). Courts in this Circuit regularly apply this rate in calculating prejudgment interest on disgorgement awards. See SEC v. Lauer, 478 F. App'x 550, 557–58 (11th Cir. 2012) (noting the widespread use of the IRS underpayment rate and holding that the district court did not abuse

Mark Dee testified, Topaz Resources had an odd payment history. It began with a $1,500 payment, prior to any invoice, and the issuer then made a $10,000 payment on February 23, 2010, even though there was only a $6,500 balance. The Court believes, on the whole, this DTC cost was in furtherance of setting up the issuer's account and is appropriately deducted as a legitimate business expense.

[7] The Court agrees with Defendants that because the SEC submitted only an invoice, not a statement, in support of the Envoy Group issuer, there is insufficient evidence to support a fee payment for Envoy Group.

[8] No bulk sale date.

its discretion in applying this "commonly used" rate). Because awards of prejudgment interest are compensatory, not punitive, the district court should make the interest decision through an "assessment of the equities." Id.

Defendants note that over $21,000 of the $51,000 requested in interest has accrued since the complaint was filed and they argue that the award would therefore unfairly penalize Island for exercising its right to defend itself. Defendants do not point to any case law in support of this proposition, and the Court does not find Defendants' argument persuasive.

Rather, the Court utilized the same framework employed by the SEC in calculating prejudgment interest – using the IRS underpayment rate, with interest compounded quarterly, and running from July 1, 2014 until February 28, 2022. But the Court utilized the disgorgement value calculated above: $114,520. The Court calculates that $39,874.05 is due in prejudgment interest. Thus, in total, Island owes $154,394.05. Regardless of the precise mathematical calculation, the Court believes this to be a fair and appropriate amount of disgorgement principal and interest.

E. Civil Penalties

Federal securities law authorizes a court to impose civil penalties for violation of the federal securities laws and provides three "tiers" of penalties in escalating amounts.

(1) First tier

> For each violation, the amount of the penalty shall not exceed the greater of (i) $5,000 for a natural person or $50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.
>
> (2) Second tier
> The amount of penalty for each such violation shall not exceed the greater of (i) $50,000 for a natural person or $250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.
>
> (3) Third tier
> The amount of penalty for each such violation shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

15 U.S.C. §§ 77t(d), 78u(d)(3).

These amounts are occasionally adjusted for inflation. Thus, for the relevant period, Tier One penalties are $7,500/$80,000, Tier Two penalties are $80,000/$400,000, and Tier Three penalties are $160,000/$775,000. See (Doc. # 296-8).

The Court can determine the applicability of each tier only "upon a proper showing" by the SEC. For a Tier Two penalty, the Court must find that the violation "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. § 78u(d)(3). For a Tier Three penalty, the Court must find that the violation "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" **and** that the violation "directly or indirectly

resulted in substantial losses or created a significant risk of substantial losses to other persons." (Id.).

The amount of the civil penalty is determined by the district court judge "in light of the facts and circumstances" and is subject to the statutory maximums prescribed above. In evaluating the facts and circumstances of the case, the Court looks to factors such as: (1) the egregiousness of the violations at issue, (2) defendants' scienter, (3) the repeated nature of the violations, (4) defendants' failure to admit to their wrongdoing, (5) whether defendants' conduct created substantial losses or the risk of substantial losses to other persons, (6) defendants' lack of cooperation and honesty with authorities, if any, and (7) whether the penalty that would otherwise be appropriate should be reduced due to defendants' demonstrated current and future financial condition. SEC v. Aerokinetic Energy Corp., No. 08-CV-1409, 2010 WL 5174509, at *5 (M.D. Fla. Dec. 15, 2010).

The SEC here argues for Third Tier penalties, arguing that at trial they presented evidence that (1) Defendants' violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) the violations created a significant risk of substantial losses. The Court agrees only in part.

First, the Court agrees with the SEC that Defendants' violations here involved fraud, deceit, manipulation, or

deliberate or reckless disregard of a regulatory requirement, which is sufficient to support Tier Two penalties. The jury here convicted Defendants of violating Section 10(b) and Rule 10b-5 of the Exchange Act, which requires that a material misrepresentation or omission be made with scienter. See FindWhat Inv. Grp. v. FindWhat.com, 658 F.3d 1282, 1295 (11th Cir. 2011) (explaining that the elements of a claim under Section 10(b) and Rule 10b-5 are: "(1) a material misrepresentation or omission; (2) made with scienter; (3) a connection with the purchase or sale of a security; (4) reliance on the misstatement or omission; (5) economic loss [i.e., damages]; and (6) a causal connection between the material misrepresentation or omission and the loss").

The Supreme Court has defined the level of scienter necessary to support a securities fraud claim as a "mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 n.12 (1976). In order to adequately plead scienter in the Eleventh Circuit, a plaintiff must allege facts creating a "strong inference" that the defendant acted purposefully or with "severe recklessness." Thompson v. RelationServe Media, Inc., 610 F.3d 628, 634 (11th Cir. 2010). Because the jury necessarily found that Defendants were at least severely reckless, this aligns with the penalty statute's requirement of "deliberate or reckless disregard of a regulatory requirement."

The trial evidence supports that Defendants acted with, at least, a reckless disregard for regulatory requirements and/or that their violations involved fraud, deceit, or manipulation. There were multiple instances where the FINRA Form 211s that Mr. Eldred or Mr. Dilley signed contained misrepresentations that Mr. Dilley or Mr. Eldred (and therefore Spartan and Island) should have known to be false. For example, some of the Forms 211s stated that Mr. Dilley had a phone call with the issuers when there was evidence that that was false.

The Court does not believe, however, that the SEC has demonstrated that the violations "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons" sufficient to support Tier Three penalties. The SEC has not pointed to any evidence showing that the violations "resulted in substantial losses." And while the Court has reviewed the trial evidence that the SEC relies on to argue that the violations "created a significant risk of substantial losses to other persons," the most that can be said is that: (1) one of the fraudsters testified that the people who bought the shell companies wanted unrestricted stock so they would "be in a position" to engage in pump and dump schemes; and (2) the fraudster was "aware" that "one or two" of those companies later became pump and dumps, though he could not say which ones. (Doc. # 194 at 90-91).

This is insufficient. "Although all Section 10(b) or Rule 10b-5 frauds could be said to create some 'risk' of some 'harm' to investors, the Remedies Act reserves third-tier civil penalties for those frauds that create a significant risk of substantial losses." SEC v. Madsen, No. 17-CV-8300 (JMF), 2018 WL 5023945, at *4 (S.D.N.Y. Oct. 17, 2018). The SEC has not made that showing here.

Moving on, the SEC requests that the Court assess penalties for three "violations" against Mr. Dilley, two violations against Mr. Eldred, and a single violation against the corporate Defendants. (Doc. # 270 at 20). Defendants do not dispute this particular point of the civil-penalties analysis.

Turning now to the factors that the Court may look to in determining civil penalties, the Court has considered Defendants' roles in the overall scheme, the evidence admitted at trial tending to show that Defendants acted with a certain level of scienter in submitting Form 211s to FINRA containing false information, the fact that this information was originally provided by third parties (at the behest of Mirman and Rose), the fact that Defendants' actions facilitated the possibility of pump and dump schemes, the inability of the SEC to identify any harmed investors, the testimony given at the trial and the hearing on remedies, and all of the other pertinent facts and circumstances. Being so advised, the Court orders civil penalties in the amount of $150,000 each

against both Mr. Dilley and Mr. Eldred. The Court believes that these Defendants have equal culpability and should face equal civil penalties. The Court further orders that Spartan and Island each pay civil penalties in the amount of $250,000. The Court has determined that these amounts are fair and appropriate under all the facts and circumstances.

Accordingly, it is now

ORDERED, ADJUDGED, and **DECREED:**

(1) The Motion for Remedies filed by Plaintiff Securities and Exchange Commission (Doc. # 270) is **GRANTED in part and DENIED in part** as set forth herein.

(2) The Clerk is directed to enter judgments against the Defendants in accordance with this Order and thereafter **CLOSE** this case.

DONE and **ORDERED** in Chambers in Tampa, Florida, this 10th day of August, 2022.

[redacted]

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE