IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. RUSSELL CRAIG and ONESTEP FINANCIAL SERVICES, LLC, *et al.*, Defendants.	: : : : : : : : : : :	CIVIL ACTION NO. 1:18-CV-4539-LMM

ORDER AND FINAL JUDGMENT

This case comes before the Court on Plaintiff Securities and Exchange Commission's ("SEC") Motion for Default Judgment [45] and Defendants[1] Russell Craig and OneStep Financial Services, LLC's ("OneStep") Motions to Strike [59, 60],[2] and Motions for Extension of Time [61, 62]. After due consideration, the Court enters the following Order.

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[1] Michael T. Musselwhite has joined Defendant Craig in signing and filing Defendants' motions. However, Michael T. Musselwhite does not appear as a named defendant in this case, and the Court noted in its earlier Order that the Clerk's entry of default did not include Mr. Musselwhite. Dkt. No. [53] at 2 n.1.

[2] In their Motions to Strike, Defendants appear to argue that the Court should strike certain Defendants and their attorney from the record in this case, as well as strike a subpoena issued to Defendant Craig by the SEC. See Dkt. Nos. [59, 60]. These Motions are without merit and are therefore **DENIED**.

I. BACKGROUND[3]

This is an SEC enforcement action, and, as noted above, the SEC has now moved for default judgment to be entered against Defendants Craig and OneStep. The SEC filed this action on September 28, 2018, alleging that Defendant Craig and the company he controls, Defendant OneStep, carried out fraudulent real estate investment schemes in violation of federal securities laws.[4] The SEC's Complaint focuses on two schemes that were allegedly executed between 2014 and 2017.

The first scheme was a condominium development project involving the purported purchase and renovation of 92 condos in Atlanta known as the Heritage Condominium Townhomes (the "Heritage Project"). The SEC alleges that from 2014 to 2016, Defendant Craig and OneStep defrauded an investor in the Heritage Project (the "Heritage Investor") by making material misrepresentations—and engaging in other deceptive conduct—about the use and safety of his investment funds, and by ultimately misappropriating over $600,000 of the Heritage Investor's money. Defendant Craig allegedly sought the Heritage Investor's participation and investment in the Heritage Project by

[3] Unless otherwise noted, the facts and allegations discussed in this Section are taken from the SEC's Complaint. See Dkt. No. [1].

[4] Peter Baker, Prestige Global Trading, Ltd., Elizabeth Oharriz, and Diversified Initiatives Consulting & Logistics, Inc. were originally named as Relief Defendants in this action, but the Court subsequently granted the SEC's request to dismiss its claims against these Defendants. See Dkt. No. [50].

representing that OneStep was seeking a deal to purchase and develop the Heritage condos and that, should the Heritage Investor invest in the Project, he was likely to realize a substantial profit. As discussed in more detail below, the Heritage Investor was allegedly led to believe that the money he invested would be held in escrow accounts and would only be used for certain purposes related to the Heritage Project; however, Defendants Craig and OneStep instead misappropriated and misused $628,976 of the $932,150 he invested.

The second scheme discussed in the Complaint also purported to involve a real estate development project. The SEC alleges that, in 2017, Defendants Craig and OneStep created a joint venture with an Alabama real estate broker (the "Broker") to develop a parcel of waterfront property in North Carolina (the "Georgetown Landing Project"). In late 2017, the Broker, allegedly acting on behalf of OneStep, convinced four investors to provide OneStep with a total of $60,000. Later, the Broker also convinced his mother to execute a power of attorney to sell her property, and he then sold two of her properties for $400,000 and transferred the funds to OneStep. The Broker's mother knew some of the Georgetown Landing Noteholders personally, and, in an apparent effort to persuade his mother to participate, the Broker allegedly informed her of their involvement and investments.

According to the SEC, the Georgetown Landing investors' money was never used to develop the Georgetown Landing property. Instead, and allegedly at Defendant Craig's direction, their money was used to repay a different note for

the Georgetown Landing Project and also transferred to third parties associated with an unrelated offshore oil transaction.

The SEC alleges that in carrying out these schemes, Defendants Craig and OneStep violated § 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, as well as § 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a). See Dkt. No. [1]. Default was entered against Defendants Craig and OneStep on December 19, 2018, and the SEC now moves for default judgment. Dkt. No. [45]. The SEC requests that Defendants Craig and OneStep be enjoined from future securities law violations and be required to disgorge their ill-gotten gains, pay prejudgment interest, and pay a civil penalty. Dkt. Nos. [1] at 26; [45-2] at 31–37.

Defendants Craig and OneStep have failed to respond to the SEC's Motion for Default Judgment.[5] The Court will therefore examine the SEC's Motion and Complaint to determine whether default judgment is appropriate.

[5] Though default was entered on December 19, 2018, Defendants did not move to set aside default until March 16, 2021. Given Defendants' unjustified delay, the Court declined to set aside default. Dkt. No. [53] at 2–3. At the same time, the Court granted Defendants' request for additional time to obtain counsel and respond to the SEC's Motion for Default Judgment. Id. at 3. The Court subsequently granted Defendants an additional extension of time to obtain counsel and respond to the SEC's Motion. Dkt. No. [57]. However, the Court also explicitly stated that it was unlikely to grant any additional extensions. Id. at 2. Despite having been given multiple opportunities to obtain counsel and respond to the SEC's pending Motion for Default Judgment, Defendants have repeatedly failed to do so and have instead filed multiple motions seeking yet more extensions of time. Dkt. Nos. [61, 62]. Having already given Defendants multiple chances and warned them that additional extensions were unlikely, these additional requests are **DENIED**.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 55 sets forth a two-step process for securing default judgment. First, a party seeking default must obtain a Clerk's entry of default pursuant to Rule 55(a) by providing evidence "by affidavit or otherwise" that the opposing party "has failed to plead or otherwise defend." Fed. R. Civ. P. 55; see also Frazier v. Absolute Collection Serv., Inc., 767 F. Supp. 2d 1354, 1360 n.1 (N.D. Ga. 2011) ("First the clerk must enter a party's default . . . [T]he party [seeking default judgment] must then apply to the court for a default judgment."). Second, after the Clerk has made an entry of default, the party seeking default judgment must file a motion for default judgment under Rule 55(b)(1) or (2). A Clerk's entry of default under Rule 55(a) is thus a prerequisite for default judgment to be granted under Rule 55(b). Sun v. United States, 342 F. Supp. 2d 1120, 1124 n.2 (N.D. Ga. 2004).

A default entered pursuant to Rule 55(a) constitutes an admission of all well-pleaded factual allegations contained in a complaint. Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975).[6] However, entry of default does not automatically warrant the Court's entry of default judgment. Frazier, 767 F. Supp. 2d at 1362 (quoting Nishimatsu, 515 F.2d at 1206). Even if a defendant is in default, he "is not held to admit facts that are not well-pleaded or

[6] The Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

to admit conclusions of law." Id.; see also United States v. Khan, 164 F. App'x 855, 858 (11th Cir. 2006) ("[A] default judgment may not stand on a complaint that fails to state a claim.").

Since entry of default constitutes an admission of the facts in a complaint, "[a] default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." Fed. R. Civ. P. 54(c). Moreover, a defaulted defendant does not admit to allegations relating to the amount of damages. Frazier, 767 F. Supp. 2d at 1365. Therefore, before entering a final order regarding a default judgment a court may conduct a hearing to determine the amount of damages. Fed. R. Civ. P. 55(b)(2)(B). However, "[a]n evidentiary hearing is not a *per se* requirement" for an entry of default judgment pursuant to Rule 55(b)(2) because said Rule "speaks of evidentiary hearings in a permissive tone." SEC v. Smyth, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005); Fed. R. Civ. P. 55(b)(2) (explaining that "[t]he court *may* conduct hearings or make referrals" to determine damages (emphasis added)). "District courts in the Eleventh Circuit have noted that an evidentiary hearing is not necessary where the moving party has provided supporting affidavits as to the issue of damages." Frazier, 767 F. Supp. 2d at 1365.

III. DISCUSSION

The SEC has moved for default judgment on its claims against Defendants Craig and OneStep: (1) violation of § 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder; and (2) violation of § 17(a) of the

Securities Act of 1933, 15 U.S.C. § 77q(a). Dkt. No. [1] ¶¶ 64–69. Below, in Part A, the Court looks to the SEC's Complaint to determine whether it has alleged facts sufficient to enter judgment on each count. Nishimatsu, 515 F.2d at 1206 ("There must be a sufficient basis in the pleadings for the judgment entered."); see also Surtain v. Hamlin Terrance Found., 789 F.3d 1239, 1245 (11th Cir. 2015) ("[W]e have subsequently interpreted the standard as being akin to that necessary to survive a motion to dismiss for failure to state a claim." (citation omitted)). In Part B, the Court addresses the relief sought by the SEC.

A. The SEC's Claims under § 10(b), Rule 10b-5, and § 17(a)

The SEC alleges that Defendants Craig and OneStep committed securities fraud in violation of § 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, as well as of § 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

These statutes involve similar elements. To establish a § 10(b) or Rule 10b-5 violation, the SEC must show "(1) a material misrepresentation or materially misleading omission; (2) in connection with the purchase or sale of securities; (3) made with scienter." SEC v. Monterosso, 756 F.3d 1326, 1333–34 (11th Cir. 2014) (citing SEC v. Merch. Cap., LLC, 483 F.3d 747, 766 (11th Cir. 2007)). To show a violation of § 17(a)(1), the SEC must show "(1) material misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with scienter." Id. at 1334 (quotation marks and citation omitted). To show a violation of § 17(a)(2) or § 17 (a)(3), "the SEC need only show (1) material

misrepresentations or materially misleading omissions, (2) in the offer or sale of securities, (3) made with negligence." Id.

As discussed below, the Court finds that the Complaint's allegations, which are deemed admitted, are sufficient to satisfy the necessary elements of the SEC's claims. Nishimatsu, 515 F.2d at 1206.

1. Material Misrepresentations and Deceptive Acts

A misrepresentation or omission is material when there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." Basic Inc. v. Levinson, 485 U.S. 224, 231–32 (1988) (quoting TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)). "[T]he relevant 'mix' of information is those facts an investor would consider when making an investment decision." SEC v. Goble, 682 F.3d 934, 943 n.5 (11th Cir. 2012). Where a defendant does not necessarily make material misrepresentations or omissions, liability may still arise where the defendant otherwise engages in deceptive conduct as part of a fraudulent scheme. Monterosso, 756 F.3d at 1333–34 (noting that the defendants were "liable under section 17(a), section 10(b), and Rule 10b–5[] because they made 'deceptive contributions to an overall fraudulent scheme'" and that the case against them "did not rely on their 'making' false statements"); see also SEC v. Big Apple Consulting USA, Inc., 783 F.3d 786, 796 (11th Cir. 2015).

Turning first to the Heritage Project and the Heritage Investor, the SEC has alleged that Defendant Craig told the Heritage Investor that $385,000 was initially needed to obtain a "proof of funds," which would be used to obtain a loan to purchase the Heritage condos; Craig also proposed that the Heritage Investor place this amount into escrow on OneStep's behalf so that the proof of funds and subsequent loan could be obtained. Dkt. No. [1] ¶ 23. Craig later told the Heritage Investor that additional money was needed to fund the Heritage Project. Id. ¶ 45. Based on Craig's representations, the Heritage Investor was led to believe that his money would remain in certain escrow accounts and only be used for certain purposes related to the Heritage Project. See, e.g., id. ¶¶ 23–26, 41–42, 47.[7] However, the Heritage Investor's money was allegedly not kept exclusively in escrow accounts for the Heritage Project nor used to obtain a proof of funds for the loan to finance the project; instead, Defendant Craig misappropriated these funds by directing (or otherwise allowing) them to be transferred and used for different, undisclosed purposes, including for his own personal expenses. See, e.g., id. ¶¶ 27–37, 46, 54.

Defendant Craig also misrepresented or omitted material information about the progress of the Heritage Project. Though Craig was informed that the owners of the Heritage condos had filed for bankruptcy and that the note and

[7] Indeed, the SEC has alleged that Defendant Craig, on multiple occasions, directly represented that the Heritage Investor's funds would remain in escrow accounts until the purchase of the Heritage condos. See, e.g., Dkt. No. [1] ¶¶ 26, 33–34, 41–42.

security deed associated with the condos was going to be sold to another entity, Craig never provided this information to the Heritage Investor and instead represented that the Project was going well. Id. ¶¶ 38–39. Furthermore, after SouthEast Title Corporation, Inc. ("SouthEast Title") informed Craig that it would no longer provide escrow services for the Heritage Project due to this bankruptcy and pending sale, Craig misrepresented this development to the Heritage Investor, instead telling him that OneStep had simply gotten a new escrow agent and that he (the Heritage Investor) should now send deposits to the escrow account at Guaranteed Investigations, Inc. ("Guaranteed").[8] Id. ¶¶ 40–41.

Turning next to the Georgetown Landing Project, the SEC alleges that, after forming a joint venture with the Broker, Defendant Craig encouraged the Broker to find investors for the Georgetown Landing Project, and that the Broker subsequently promised four individuals that their investment funds would remain in escrow and only be used by OneStep in connection with the Georgetown Landing property. Id. ¶¶ 57–58. Each individual's investment was documented with a promissory note, signed by Defendant Craig on behalf of OneStep, directly representing that the investors' principal would be returned within a month and promising a "guaranteed" 50% profit on the investment. Id.

[8] Craig's instruction for the Investor to make further deposits to the Guaranteed escrow account was again made under the guise that such funds would be kept in that escrow account and used for the Heritage Project, despite the fact that Craig had separately reached an oral agreement with the Guaranteed escrow agent that did *not* specify that the money deposited into this account on behalf of Onestep would remain in escrow. Id. ¶ 43

¶ 59. The promissory notes in which these representations were made also stated that the notes were secured by the Georgetown Landing property, though neither Craig nor OneStep owned the property or had the authority to promise it as collateral. Id.

The fifth investor in this scheme was the Broker's mother, who signed a power of attorney allowing the Broker to sell two of her properties for $400,000 and invest this money in the Georgetown Landing Project. Id. ¶¶ 6, 60. The Broker had allegedly repeated the representations Craig had made to him, telling his mother that her investment would be used for the Georgetown Landing property and promising a $50,000 return on her investment. Id.

However, none of the Georgetown Landing investors' money was used to develop the Georgetown Landing property. Id. ¶ 61. Instead, Craig directed OneStep to use $125,000 to repay a different note for the Georgetown Landing Project, and the remainder of these funds was transferred to third parties associated with a different, undisclosed offshore oil transaction. See id. None of the $460,000 initially invested by these five individuals has been returned to them. Id.

The Court finds that the foregoing misrepresentations and deceptive acts were material. Reasonable investors would want to know how their money was truly being used, and their investment calculus and course of action would have undoubtedly been affected had they known that their investments were in fact going to be used to fund entirely different entities and projects, or even for

personal expenses. Merch. Cap., 483 F.3d at 766 ("The test for materiality in the securities fraud context is whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action." (quotation marks and citation omitted)).

2. In Connection with the Offer, Purchase, or Sale of Securities

The SEC maintains that Defendant's misrepresentations and deceptive acts were made in connection with the formation of investment contracts, see Dkt. No. [45-2] at 27, which are considered securities for the purposes of federal securities laws. Merch. Cap., 483 F.3d at 754 (citing 15 U.S.C. §§ 77b(a)(1), 78c(a)(10)). "An investment contract is 'a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.'" Id. (quoting SEC v. W.J. Howey Co., 328 U.S. 293, 298–99 (1946)). The Eleventh Circuit has "divided the *Howey* test into the three elements: (1) an investment of money, (2) a common enterprise, and (3) the expectation of profits to be derived solely from the efforts of others." Fedance v. Harris, 1 F.4th 1278, 1288 (11th Cir. 2021) (quoting SEC v. Unique Fin. Concepts, Inc., 196 F.3d 1195, 1199 (11th Cir. 1999)).

The first Howey element is satisfied for both schemes: the SEC has alleged that the Heritage Investor invested over $900,000 toward the Heritage Project, see Dkt. No. [1] ¶¶ 53–54, and that the Georgetown Landing investors collectively invested $460,000, see id. ¶¶ 58–61.

The second Howey element—the "common enterprise" element—is also satisfied. "A common enterprise exists where the fortunes of the investor are interwoven with and dependent on the efforts and success of those seeking the investment or of third parties." Unique Fin. Concepts, 196 F.3d at 1199 (quotation marks and citation omitted) (explaining the Eleventh Circuit's application of the "broad vertical commonality" test). Stated another way, this element "requires the movant to show that the investors are dependent upon the expertise or efforts of the investment promoter for their returns." SEC v. ETS Payphones, Inc., 408 F.3d 727, 732 (11th Cir. 2005) (quotation marks and citation omitted).

As for the Heritage Project, the SEC alleges that the Heritage Investor was told that OneStep was pursuing a deal to purchase and develop the Heritage Condos, whereby the Heritage Investor would realize a substantial profit on his investment. Dkt. No. [1] ¶¶ 20–21. To this end, Defendant Craig allegedly represented that OneStep would purchase the Heritage Condos, refinance the property, make repairs, and then pay the Heritage Investor approximately $335,000 as a return on his initial $385,000 investment. Id. ¶ 23. The SEC's allegations illustrate that the realization of the Heritage Investor's expected profit turned entirely on Defendants' efforts to purchase and refinance the Heritage condos. Similarly, the Georgetown Landing investors were promised a return of their principal within a month, as well as a 50% profit, id. ¶¶ 6, 59, and the realization of these returns was contingent on Defendants Craig and OneStep's

efforts to develop the Georgetown Landing property. Accordingly, the SEC's allegations satisfy the second Howey element.

The SEC's allegations also satisfy the third element of the Howey test—whether the Heritage Investor and the Georgetown Landing investors were led to expect a profit "solely" from the efforts of Defendants Craig and OneStep. For this element, the term "solely" is "not interpreted restrictively." Merch. Cap., 483 F.3d at 754. Instead, courts consider "whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise." Unique Fin. Concepts, 196 F.3d at 1201. "[T]he focus is on the dependency of the investor on the entrepreneurial or managerial skills of a promoter or other party." Merch. Cap., 483 F.3d at 755 (quotation marks and citation omitted).

Starting again with the Heritage Project, the Heritage Investor was led to believe that OneStep was pursuing a deal to purchase and develop the Heritage condos and that he would profit substantially if he invested in this Project. Dkt. No. [1] ¶¶ 20–21. The Heritage Investor was a chiropractor who allegedly had limited investment and commercial real estate experience, and his expected investment return was contingent on Defendants Craig and OneStep's efforts to purchase, refinance, and repair the Heritage condos. Id. ¶¶ 19, 23. Finally, though the Heritage Investor signed an operating agreement making him a managing member and executive financial officer of Defendant OneStep, this agreement specifically prohibited him from acting on behalf of OneStep. Id. ¶ 22.

Accordingly, the third prong of the Howey test is satisfied with regard to the Heritage Project. See Merch. Cap., 483 F.3d at 755.

The SEC's allegations also satisfy the third Howey element as to the Georgetown Landing investors. These investors were promised an investment return through the development of the Georgetown Landing property, and the realization of their returns was entirely within the control of Defendants Craig and OneStep. See Dkt. No. [1] ¶¶ 58–63. There is no indication that the Georgetown Landing investors had any involvement in the Georgetown Landing Project, and their expected returns therefore depended entirely on Defendants' efforts.

All three Howey elements are satisfied as to both alleged schemes, meaning that Defendants' misrepresentations, omissions, and other deceptive acts were made in connection with the formation of investment contracts (and therefore in connection with "securities" for the purposes of the federal securities laws at issue in this case).

3. Scienter

The final issue is whether Defendants acted with scienter. In securities fraud cases, scienter "refers to a mental state embracing intent to deceive, manipulate, or defraud." McDonald v. Alan Bush Brokerage Co., 863 F.2d 809, 815 (11th Cir. 1989) (quotation marks and citation omitted). It also includes "severe recklessness," which encompasses

> those highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it.

Id. at 814 (quotation marks and citation omitted).

The SEC's allegations satisfy the scienter element as to both schemes and for both Defendants.[9] With regard to the Heritage Project, Defendant Craig fundamentally misrepresented how the Heritage Investor's money would be used. Rather than using it for a disclosed purpose related to the acquisition and development of the Heritage condos, Craig misappropriated a majority of the Investor's investment by using it to fund undisclosed projects and transactions, as well as for personal expenses. As other courts have observed, a defendant "cannot specifically represent that particular funds will be used for a specific project and then immediately use those funds for other purposes. An investor is entitled to accurate information to consider in making his investment decision." See SEC v. Watkins, 317 F. Supp. 3d 1244, 1256–58 (N.D. Ga. 2018) (quotation marks and citation omitted) (finding that a defendant's use of investment funds

[9] Defendant Craig was the President of Defendant OneStep, see Dkt. No. [1] ¶ 13, so his knowledge and scienter are imputable to Defendant OneStep. See In re Sunbeam Sec. Litig., 89 F. Supp. 2d 1326, 1340 (S.D. Fla. 1999) (citing Am. Standard Credit, Inc. v. Nat'l Cement Co., 643 F.2d 248, 270–71 & n.16 (5th Cir. 1981)).

for undisclosed purposes and personal expenses supported a finding of scienter).[10]

Similarly, with regard to the Georgetown Landing investors, the SEC's allegations are sufficient to show scienter because Defendants knowingly accepted the investors' money and then directed that it be used for different, undisclosed purposes. See Dkt. No. [1] ¶¶ 61–62; cf. Watkins, 317 F. Supp. 3d at 1256–58.

B. Remedies

The SEC seeks various forms of relief, which the Court addresses separately below.

1. Injunctive Relief

The SEC first asks that the Court enjoin Defendants from engaging in future securities violations. Dkt. Nos. [1] at 26; [45-2] at 31–32.

> 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. Indicia that a wrong will be repeated include the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of the conduct, and the likelihood that the defendant's occupation will present opportunities for future violations. While

[10] Defendant Craig also failed to inform the Heritage Investor about the bankruptcy affecting the sale of the Heritage condos and the true reason that SouthEast Title was no longer providing escrow services to OneStep—two highly unreasonable omissions which, at the very minimum, demonstrated severe recklessness, if not an outright intent to defraud. Dkt. No. [1] ¶¶ 39–40.

> scienter is an important factor in this analysis, it is not a prerequisite to injunctive relief.

SEC v. Calvo, 378 F.3d 1211, 1216 (11th Cir. 2004) (internal citations and quotations omitted). As the Court explained in Part III.A of this Order, Defendants' alleged conduct violated federal securities laws, so the first prong is satisfied. See SEC v. Miller, 744 F. Supp. 2d 1325, 1336 (N.D. Ga. 2010) (explaining that "the 'previous' violations relied upon by federal courts as a basis for injunctive relief are frequently the same ones just proven in the liability portion of those cases"). The second prong is also satisfied because several relevant factors indicate a reasonable likelihood that the wrongs in this case could be repeated: Defendants engaged in two egregiously fraudulent schemes over the course of multiple years; Defendants have neither recognized the wrongfulness of their conduct nor made assurances against future violations; and Defendants would still be in a position to carry out similar fraudulent schemes in the future. Accordingly, the Court will impose a permanent injunction against Defendants Craig and OneStep.

2. Disgorgement

Next, the SEC seeks disgorgement of ill-gotten gains from Defendants Craig and OneStep. Dkt. No. [45-2] at 33–34. The Court has authority to "require disgorgement . . . of any unjust enrichment by the person who received such unjust enrichment as a result of such violation." 15 U.S.C. § 78u(d)(3). "The SEC is entitled to disgorgement upon producing a reasonable approximation of a

defendant's ill-gotten gains." Calvo, 378 F.3d at 1217. Once the SEC produces a reasonable approximation, the burden shifts to the defendant to demonstrate that the SEC's estimate is unreasonable. Id. "Because disgorgement is remedial and not punitive, the court's power to order disgorgement 'extends only to the amount with interest by which the defendant profited from his wrongdoing.'" SEC v. Phoenix Telecomm., L.L.C., 231 F. Supp. 2d 1223, 1225 (N.D. Ga. 2001) (quoting SEC v. Blatt, 583 F.2d 1325, 1335 (5th Cir. 1978)).

The SEC argues that the money Defendants received from the investors constitutes unjust enrichment because the investors received nothing of value from Defendants. Dkt No. [45-2] at 32. In support of its request for disgorgement, the SEC submitted a declaration by Richard Gregory Lill, who serves as a forensic accountant for the SEC. Dkt. No. [45-3] ¶ 1. Lill reviewed the financial records of individuals and entities involved in this case, including deposits and transfers between different accounts, and was able "to trace investor money and determine the amount each defendant ultimately received." Id. ¶¶ 3, 4. Lill calculated the respective amounts Defendants Craig and OneStep received from the investors: $9,846 for Craig, and $536,145 for OneStep. Id. ¶ 5.

The SEC also requests that Defendants Craig and OneStep be jointly and severally liable for the amount of disgorgement owed by OneStep. Dkt. No. [45-2] at 33–34. "It is a well settled principle that joint and several liability is appropriate in securities laws cases where two or more individuals or entities have close relationships in engaging in illegal conduct." Calvo, 378 F.3d at 1215.

Here, Defendant Craig was the President of OneStep and controlled OneStep's activities and accounts, and he transferred and used investor money in OneStep's accounts for his personal benefit or for purposes that were not disclosed to the investors. The Court finds that joint and several liability is therefore warranted in this case.

3. Prejudgment Interest

The SEC also requests that the Court award prejudgment interest against both Defendants. Dkt. No. [45-2] at 34. Whether to award prejudgment interest is left to the discretion of the district court. See Werner Enters., Inc. v. Westwind Maritime Int'l, Inc., 554 F.3d 1319, 1328 (11th Cir.2009). The SEC seeks prejudgment interest of $1,536.14 as to Defendant Craig and $83,648.10 as to Defendant OneStep. Dkt. Nos. [45-2] at 34; [45-3] ¶ 6. These amounts were calculated from the last date the Defendants received money from the most recent violation, which was in November 2017, using the IRS underpayment rate, 26 U.S.C. § 6621(a)(2). Dkt. Nos. [45-2] at 34; [45-3] ¶ 6.

The Court finds that awarding prejudgment interest is justified in this case. See SEC v. McClintock, No. 1:12-CV-04028-SCJ, 2015 WL 11201242, at *4 (N.D. Ga. Sept. 15, 2015) (finding that because the defendants "would have benefitted from what in effect amounted to interest-free loans of the ill-gotten funds" it was "not only fair, but equitable," for the court to award prejudgment interest). Accordingly, the Court grants the SEC's request for prejudgment interest in the amount of $1,536.14 as to Defendant Craig and $83,648.10 as to Defendant

OneStep, as calculated pursuant to 26 U.S.C. § 6621(a)(2) in the Lill declaration. Dkt. No. [45-3] ¶ 6; see also SEC v. Lauer, 478 F. App'x 550, 557–58 (11th Cir. 2012) (approving use of IRS underpayment rate to calculate prejudgment interest).

4. Civil Monetary Penalties

Finally, the SEC asks the Court to impose civil monetary penalties on Defendant Craig. Dkt. No. [45-2] at 35–37. Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act—with nearly identical language—allow the SEC to seek civil penalties imposed by the Court. The Exchange Act provides,

> Whenever it shall appear to the Commission that any person has violated any provision of this chapter, [or] the rules or regulations thereunder, . . . the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to[] (i) impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation[.]

15 U.S.C. § 78u(d)(3)(A).[11] To determine the amount of the penalty, the Act outlines three tiers based on the nature of the violation. Under the first tier, "[f]or *each violation*, the amount of the penalty shall not exceed the greater of (I) $9,753 for a natural person or $97,523 for any other person." 15 U.S.C. § 78u(d)(3)(B)(i) (emphasis added).[12] The second tier goes further: "Notwithstanding clause (i), the amount of a civil penalty . . . for *each such*

[11] Due to the nearly identical language of the relevant statutes, only the Exchange Act will be quoted to avoid redundancy.

[12] Each of the penalty caps have been updated for inflation per 17 C.F.R. § 201.1001.

violation shall not exceed the greater of (I) $97,523 for a natural person or $487,616 for any other person . . . if the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. § 78u(d)(3)(B)(ii) (emphasis added). For the third tier, the Act states:

> Notwithstanding clauses (i) and (ii), the amount of a civil penalty imposed . . . for *each violation* . . . shall not exceed the greater of (I) $195,047 for a natural person or $975,230 for any other person . . . if—
>
> > (aa) the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and
> >
> > (bb) such violation 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) (emphasis added). Stated another way, "a third-tier penalty may be imposed when the second-tier requirements are met and the 'violations directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons[.]'" Monterosso, 756 F.3d at 1338 (citations omitted).

"Civil penalties are intended to punish the individual wrongdoer and to deter him and others from future securities violations." Id. (citing SEC v. Sargent, 329 F.3d 34, 41 n.2 (1st Cir. 2003)). The "Commission need only make 'a proper showing' that a violation has occurred and a penalty is warranted." SEC v. Warren, 534 F.3d 1368, 1370 (11th Cir. 2008). Although the statute leaves the

amount to be imposed to the discretion of the district judge, "courts consider numerous factors, including the egregiousness of the violation, the isolated or repeated nature of the violations, the degree of scienter involved, whether the defendant concealed his trading, and the deterrent effect given the defendant's financial worth." Miller, 744 F. Supp. 2d at 1344 (citing Sargent, 329 F.3d at 42). The Act also authorizes penalties for "each violation," so "courts are empowered to multiply the statutory penalty amount by the number of statutes the defendant violated, and many do." Id. at 1345.

The SEC asks the Court to impose third-tier civil monetary penalties using the "per violation" approach—multiplying the requested statutory penalty of $195,047 by two—resulting in a total penalty of $390,094. Dkt. No. [45-2] at 37. The Court agrees that this is a suitable penalty based on the facts and circumstances of this case. As discussed in detail above, Defendant Craig's conduct—including his material misrepresentations, omissions, and other deceptive acts—was egregious and resulted in substantial financial harm to those who invested in the Heritage Project and the Georgetown Landing Project. This conduct was also not isolated: it took place in two separate schemes spanning multiple years. The Court therefore finds that a third-tier, "per violation" penalty of $390,094 is warranted for both punishment and deterrence.

IV. CONCLUSION

As discussed in the preceding paragraphs, the Court enters default judgment in favor of the SEC as follows:

I.

It is hereby **ORDERED** that Defendants Craig and OneStep are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10(b)-5 promulgated thereunder, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

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

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

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(1) any investment strategy or investment in securities;

(2) the prospects for success of any product or company;

(3) the use of investor funds;

(4) the safety or refundability of investor funds;

(5) compensation to any person; or

(6) the misappropriation of investor funds or investment proceeds.

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

II.

It is **ORDERED** that Defendants Craig and OneStep are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

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

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in

order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(1) any investment in or offering of securities,

(2) the prospects for success of any product or company,

(3) the use of investor funds;

(4) the safety or refundability of investor funds;

(5) compensation to any person; or

(6) the misappropriation of investor funds or investment proceeds.

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

III.

It is **ORDERED** that Defendants shall pay disgorgement of ill-gotten gains and prejudgment interest thereon, as well as civil penalties in the following amounts:

Defendant	Disgorgement	Pre-judgmen tinterest	Civil Penalty	Total
Craig	$9,846	$1,536.14	$390,094	**$401,476.14**
OneStep and Craig, jointly and severally	$536,145	$83,648.10		**$619,793.10**

Defendants shall satisfy these obligations by paying their respective amounts to the Securities and Exchange Commission within 30 days after entry of this Final Judgment. Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; the relevant Defendant's name as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any amounts due after 30 days of entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

The Commission may enforce the Court's judgment for penalties by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq*., and moving for civil contempt for the violation of any Court orders issued in this action. Defendant shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the

Court. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Craig shall, after offset or reduction of any award of compensatory damages in any Related Investor Action based on his payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of his payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Craig shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Craig by or on behalf of

one or more investors based on substantially the same facts as alleged in the Complaint in this action.

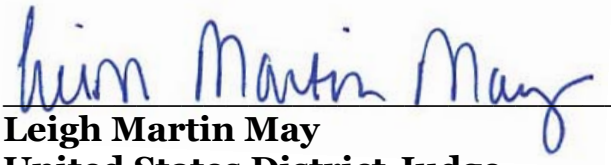
IV.

It is **ORDERED** that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

V.

In accordance with the foregoing, the SEC's Motion for Default Judgment [45] is **GRANTED**. Defendants' Motions to Strike [59, 60] and Motions for Extension of Time [61, 62] are **DENIED**. The Clerk is **DIRECTED** to **CLOSE** this case.

IT IS SO ORDERED this 8th day of November, 2021.



Leigh Martin May
United States District Judge