UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No.	2:23-cv-05379-AH-(BFMx)	Date	July 10, 2026
Title	*Securities and Exchange Commission v. American Patriot Brands, Inc. et al.*		

Present: The Honorable	Anne Hwang, United States District Judge

Yolanda Skipper	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: (IN CHAMBERS) AMENDED ORDER GRANTING IN PART AND DENYING IN PART THE SEC'S MOTION FOR REMEDIES AND ENTRY OF FINAL JUDGMENT (DKT. NO. 145)

Before the Court is a Motion for Remedies and Entry of Final Judgment ("Motion") brought by Plaintiff Securities and Exchange Commission (the "SEC") against Defendants American Patriot Brands ("APB"), Urban Pharms, LLC ("Urban Pharms), DJ & S Property #1, LLC ("DJ&S"), and TSL Distribution, LLC ("TSL") (collectively, the "Entity Defendants"), and Robert Y. Lee ("Lee"), Brian L. Pallas ("Pallas"), and Relief Defendant Castro Business Enterprises, LLC ("CBE") (all collectively, "Defendants"). Mot., Dkt. No. 145. Defendants filed an Opposition. Opp'n, Dkt. No. 146. The SEC filed a Reply. Reply, Dkt. No. 148. The Court heard oral argument on June 24, 2026. The Court has reviewed the parties' papers and the relevant law. For the following reasons, the Court **GRANTS IN PART** and **DENIES IN PART** the SEC's Motion.

I. BACKGROUND

Unless otherwise indicated, the Court made the following findings of fact in its summary judgment order. Summ. J. Order, Dkt. No. 122.

APB is a Nevada corporation that previously was known as "The Grilled Cheese Truck, Inc." and operated a food truck business. In 2016, APB decided to enter the marijuana business. In September 2016, APB acquired Urban Pharms and DJ&S. DJ&S owns a 275-acre farm located near Medford, Oregon (the "Oregon Farm"), at which Urban Pharms conducts marijuana-related operations. In 2017, APB acquired TSL, which distributed marijuana to Oregon dispensaries pursuant to an Oregon cannabis distribution license.

Robert Lee has served as APB's CEO and Chairman of the Board of Directors since 2016, excluding a brief period in 2019, and has maintained ultimate responsibility for APB, including approving investor slide decks, raising money from investors, and controlling the finances of APB, Urban Pharms, DJ&S, and TSL (collectively, "Corporate Defendants"). Brian Pallas has served as APB's Chief Operating Officer ("COO") since at least 2017 and has been a member of APB's Board of Directors since at least 2018. Pallas is the managing member of Urban Pharms, DJ&S, and TSL. APB's only two corporate officers since 2021 have been Lee and Pallas. Pallas and Lee jointly manage, exercise control over, and execute contracts on behalf of APB's subsidiaries including Urban Pharms, DJ&S, and TSL.

J. Bernard Rice began consulting for APB around March 2017, obtained the title of Executive Vice President of Corporate Development, and was added the title of Chief Financial Officer in October 2017. Rice left APB around July 2019 and never assumed traditional CFO responsibilities.

From 2016 until this case was filed, Defendants raised over $50 million from investors. They did so through the four securities offerings that are at issue in this case:

1. "The Initial Offering": from 2017 to early 2019, Lee, Rice, and APB solicited debt and stock investments from several individuals and investor groups.

2. "The Stonecrest Offering": from July 26, 2019 through November 15, 2019, APB engaged Stonecrest Capital Markets, Inc. ("Stonecrest"), a securities broker-dealer, to sell secured convertible notes to residents of Puerto Rico purporting to be secured by a first priority pledge of the membership interests of Urban Pharms and DJ&S.

3. "The $5 Million Raise": from approximately July 2021 through April 2022, Lee, Pallas and APB attempted to raise money through an offering of a secured convertible debt involving membership interests in an entity created by Lee, Pallas, and APB known as "APB Real Estate Holdings, Inc."

4. "The Garden Unit Offering": from May 2022 through March 2023, Lee, Pallas, APB and DJ&S sold membership units in two entities, Value Properties I, LLC and Value Properties II, LLC, that leased the Oregon Farm's gardens.

The SEC brought a Complaint against Defendants on March 16, 2023 alleging violations of the following securities laws: Section 17(a) of the Securities Act ("Section 17(a)"), 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act ("Section 10(b)"), 15 U.S.C. § 78q(b), and Rule 10b-5 ("Rule 10b-5"), 17 C.F.R. § 240.10b-5. Compl., Dkt. No. 1.

On June 16, 2025, the Court granted the SEC's Motion for Partial Summary Judgment. Dkt. No. 122. On March 20, 2026, the SEC filed the instant Motion. Dkt. No. 145.

II. LEGAL STANDARDS

A. Injunctive Relief

Under Section 20(b) of the Securities Act, "upon a proper showing," the Court may enjoin "any acts or practices which constitute or will constitute a violation of the provisions of [the Securities Act], or of any rule or regulation prescribed under authority thereof." *See* 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d)(1) (Section 21(d)(1) of the Exchange Act permitting the Court to do the same). "In order to obtain a permanent injunction . . . , the SEC ha[s] the burden of showing there [is] a reasonable likelihood of future violations of the securities laws." *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980). "The existence of past violations may give rise to an inference that there will be future violations," and "the fact that the defendant is currently complying with the securities laws does not preclude an injunction." *Id.*

In the Ninth Circuit, to evaluate the likelihood of future violations of securities laws, courts "'must assess the totality of the circumstances surrounding the defendant and his violations,' considering factors such as (1) the degree of scienter, (2) the isolated or recurrent nature of the infraction, (3) the defendant's recognition of the wrongful nature of his conduct, (4) the likelihood, because of the defendant's occupation, that future violations might occur, and (5) the sincerity of [the defendant's] assurances against future violations." *SEC v. Murphy*, 50 F.4th 832, 841–42 (9th Cir. 2022) (quoting *Murphy*, 626 F.2d at 655).

B. Disgorgement

District courts have "broad equity powers to order the disgorgement of 'ill-gotten gains' obtained through the violation of the securities laws." *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998). "Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable." *Id.* "Further, where two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws, they have been held jointly and severally liable for the disgorgement of illegally obtained proceeds." *Id.*

The SEC "bears the ultimate burden of persuasion that its disgorgement figure reasonably approximates the amount of unjust enrichment." *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989)). "Once the SEC establishes a reasonable approximation of defendants' actual profits, . . . the burden shifts to the defendants 'to demonstrate that the disgorgement figure was not a reasonable approximation.'" *Id.* (quoting *First City Fin.*, 890 F.2d at 1232).

If the SEC establishes a disgorgement figure, the Court has discretion to order prejudgment interest. *Platforms Wireless*, 617 F.3d at 1099. "In deciding if and how much prejudgment interest should be granted, a district court must examine . . . matters encompassed within the merits of the underlying action." *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 176 (1989) (also noting that "in a federal securities action" district courts should consider a number of factors, such as "whether prejudgment interest is necessary to compensate the plaintiff fully for his injuries, the degree of personal wrongdoing on the part of the defendant, the availability of alternative investment opportunities to the plaintiff, whether the plaintiff delayed in bringing or prosecuting the action, and other fundamental considerations of fairness," but not "specify[ing] what factors a district court must consider when deciding under federal law whether to grant prejudgment interest").

Disgorgement "typically includes prejudgment interest to ensure that wrongdoers do not profit from their illegal conduct." *SEC v. Rothenberg*, 428 F. Supp. 3d 246, 249–50 (N.D. Cal. 2019). The Ninth Circuit has approved of prejudgment interest calculated "from the date the securities were sold." *Platforms Wireless*, 617 F.3d at 1099–1100 (holding that the lower court's use of the SEC's prejudgment interest for a violation of Section 5 of the Securities Act, 17 U.S.C. § 77e, was not an abuse of discretion).

C. Civil Penalties

District courts determine the amount of civil penalties to impose "'in light of the facts and circumstances' of the case." *SEC v. Husain*, 70 F.4th 1173, 1184 (9th Cir. 2023) (quoting 15 U.S.C. §§ 77t(d)(2)(A), 78u(d)(3)(B)(i)). "In doing so, courts consider the factors set out in *Murphy* . . . which [the Ninth Circuit] originally applied in determining whether injunctive relief is appropriate." *Id.* District courts must therefore "'assess the totality of circumstances surrounding the defendant and his violations' using the same *Murphy* factors" that are considered when evaluating injunctions. *Murphy*, 50 F.4th at 851 (quoting *SEC v. Fehn*, 97 F.3d 1276, 1295 (9th Cir. 1996)).

There are three tiers of civil penalties under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. 15 U.S.C. §§ 77t(d)(2)(A), 78u(d)(3)(B)(i). A first-tier penalty shall not exceed the greater of (a) $5,000 for a natural person or $50,000 for any other person, or (b) the gross amount of pecuniary gain to such defendant as a result of the violation. 15 U.S.C. §§ 77t(d)(2), 78u(d)(3)(B). A second-tier penalty shall not exceed the greater of (a) $50,000 for a natural person or $250,000 for any other person, or (b) the gross amount of pecuniary gain to such defendant, if the violation involved fraud, deceit, manipulation, or deliberate reckless disregard of a regulatory requirement. *Id.* And a third-tier penalty shall not exceed the greater of (a) $100,000 for a natural person or $500,000 for any other person, or (b) the gross amount of pecuniary gain, if the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement *and* the violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.[1] *Id.*

[1] The inflation adjusted civil penalty amounts are as follows: (1) tier one – $11,823 for a natural person and $118,225 for any other person; (2) tier two – $118,225 for a natural person and $591,127 for any other person; and (3) tier three – $236,451 for a natural person and $1,182,251 for any other person. 17 C.F.R. § 201.1001(b); Sec. and Exch. Comm'n, *Inflation Adjustment to the Civil Monetary Penalties Administered by the Securities and Exchange Commission* (as of August 18, 2025), https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.

The civil penalty provisions of the Securities Act and the Exchange Act set maximum penalties "[f]or each violation," but neither act defines "violation." *See* 15 U.S.C. §§ 77t(d)(2)(A), 78u(d)(3)(B). "District courts have discretion to determine what constitutes a 'violation.'" *Murphy*, 50 F.4th at 848 (addressing civil penalties under the Exchange Act); *Husain*, 70 F.4th at 1181 n.11 (holding the same for both the Securities Act and Exchange Act).

III. DISCUSSION

The Court addresses the SEC's Motion with respect to each form of relief sought.

A. Injunctive Relief

The SEC seeks two sets of injunctions: (1) permanent injunctions prohibiting Lee, Pallas, and the Entity Defendants from further violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and (2) a conduct-based injunction against Lee and Pallas prohibiting them from participating in the issuance, purchase, offer, or sale of any security provided, however, that such injunction shall not prevent each individual from purchasing or selling securities for his own personal accounts. Mot. at 9. The SEC also seeks an order permanently barring Lee and Pallas from serving as an officer or director of a public company. *Id.* at 13.

Defendants do not oppose the SEC's request for injunctive relief, and acknowledge that they will comply with the Court's Order. Opp'n at 1. This alone could constitute a concession as to these remedies. *See Jenkins v. Cnty. of Riverside*, 398 F.3d 1093, 1095 n.3 (9th Cir. 2005) ("Jenkins abandoned her other two claims by not raising them in opposition to the County's motion"); C.D. Cal. R. 7-12 ("The failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion"). Nonetheless, the Court considers whether the SEC has met its burden.

1. <u>Future Violations of the Securities and Exchange Act</u>

The SEC seeks a permanent injunction prohibiting Lee, Pallas, and the Entity Defendants from future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Mot. at 10-13.

The Court has found Lee, Pallas, and the Entity Defendants liable for violations of Section 17(a), Section 10(b) and Rule 10b-5, Summ. J. Order at 16, which require a finding of scienter. *See SEC v. Rubera*, 350 F.3d 1084, 1094 (9th Cir. 2003) (noting that scienter is a required element for liability under the antifraud provisions, such as Section 17, Section 10(b), and Rule 10b-5). This scheme continued for years, between 2017 and 2023. Summ. J. Order at 3. These facts show that this was not an isolated event but recurrent in nature. *See, e.g., SEC v. Alexander*, 115 F. Supp. 3d 1071, 1086 (N.D. Cal. 2015) (finding a scheme that spanned two years recurrent in nature and not isolated).

In addition, Lee and Pallas have demonstrated little recognition of the wrongful nature of their conduct and Defendants do not contest this factor. *See* Opp'n at 1; *see also SEC v. Yang*, 2021 WL 1234886, at *11 (C.D. Cal. Feb. 16, 2021) (finding an acknowledgment of wrongdoing when defendants consented to the entry of a preliminary injunction and later entered into consent agreements with the SEC); *cf. Husain*, 70 F.4th at 1185 (finding the defendant had established a genuine issue of material fact as to whether he recognized the wrongful nature of his conduct when the SEC "recognized that [defendant] had admitted at least part of his wrongdoing" and when he "took responsibility for deceiving the SEC"). Defendants have not submitted any evidence that reflects a recognition on the part of Lee or Pallas of the wrongful nature of the conduct.

Given that Lee and Pallas continue to serve as CEO and COO, respectively, of APB, there is a potential likelihood of future violations of this very kind. *See* Summ. J. Order at 2; Mot. at 11-12; *cf. Yang*, 2021 WL 1234886, at *11 (noting that defendants' professions as a doctor and independent contractor for local businesses did not suggest a likelihood of future violations because there was no connection to the securities field); *SEC v. Brenda Christine Barry/ Bak W., Inc.*, 2023 WL 4491724, at *6 (C.D. Cal. July 12, 2023) (finding this factor weighed against injunctive relief when defendants represented they did not plan to re-enter the securities industry). There is no indication from Lee and Pallas that they will not work with securities in the future.

In the same vein, there are no assurances from Lee or Pallas that they will abstain from future violations without a court order, which this Court finds weighs in favor of a permanent injunction. *Cf. Yang*, 2021 WL 1234886, at *11 (finding sincere the defendants' sworn declarations that they will never work in the securities field or participate in the issuance of any securities and finding those sincere assurances weighed in favor of a lesser penalty); *Barry*, 2023 WL 4491724, at *6 (finding defendants' identical declarations that they believed it important to uphold securities laws weighed neither for nor against granting an injunction).

For all of these reasons, the Court finds there is a reasonable likelihood of future violations of securities laws. Therefore, an order permanently enjoining Lee and Pallas from future violations of the Securities Act and the Exchange Act is appropriate here. And, for the same reasons the Court finds injunctive relief appropriate against Lee and Pallas, the Court finds injunctive relief appropriate against the Entity Defendants. *See Liu v. SEC*, 591 U.S. 71, 73 (2020) (recognizing that partners engaged in "concerted wrongdoing" can be held liable for benefits that accrue to their affiliates).

2. **Conduct Based Injunctions**

The SEC also seeks a permanent injunction prohibiting Lee and Pallas from directly or indirectly participating in the issuance, purchase, offer, or sale of any security, other than for their own personal account. Mot. at 10-12.

District courts have broad discretion to fashion "any equitable relief that may be appropriate or necessary for the benefit of investors," including a conduct-based injunction. 15 U.S.C. § 78u(d)(5); *SEC v. Moleski*, 2021 WL 6752254, at *5 (C.D. Cal. Oct. 21, 2021). As with any injunction, the SEC must show there is a reasonable likelihood that Pallas and Lee will engage in the conduct the injunction seeks to prohibit. *Murphy*, 626 F.2d at 655.

For the reasons discussed immediately above, an injunction that prohibits Lee and Pallas from directly or indirectly participating in the issuance, purchase, offer, or sale of any security, other than for his own personal account, is appropriate here.

3. **Bar Against Serving as an Officer or Director of a Publicly Traded Company**

The SEC also seeks an officer and director bar prohibiting Owen from acting as an officer or director of any issuer that has a class of securities registered pursuant to Exchange Act Section 12 or that is required to file reports pursuant to Exchange Act Section 15o(d). Mot. at 13-14.

A district court "may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine," any person "from acting as an officer or director [of a public company] if the person's conduct demonstrates unfitness to serve as an officer or director." 15 U.S.C. § 78u(d)(2). In determining whether to order the bar, a court may consider: "(1) the 'egregiousness' of the underlying securities law violation; (2) the defendant's 'repeat offender' status; (3) the defendant's 'role' or position when he engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur." *First Pac. Bancorp*, 142 F.3d at 1193 (citing *SEC v. Patel*, 61 F.3d 137, 141 (2d Cir. 1995)); *see also SEC v. Sabrdaran*, 252 F. Supp. 3d 866, 889–890 (N.D. Cal. 2017) (employing the *First Pacific Bancorp* factors to determine unfitness). The Court should also consider "whether a conditional bar (e.g., a bar limited to a particular industry) and/or a bar limited in time (e.g., a bar of five years)" would be sufficient to prevent future securities law violations. *Patel*, 61 F.3d at 142; *see also* 15 U.S.C. § 78u(d)(2).

The Court finds an officer and director bar is appropriate here. Lee and Pallas's violations were egregious, both are repeat violators, and both served and continue to serve as CEO and COO of APB. The Court has already determined there was a sufficient degree of scienter, and the Court has already determined there is a reasonable likelihood that future violation will occur.

For these reasons, the Court finds that a permanent and unconditional officer and director bar against Lee and Pallas is appropriate. *See, e.g., SEC v. Wellness Matrix Grp., Inc.*, 2023 WL 5235177, at * 8 (C.D. Cal. Aug. 10, 2023) (analyzing same factors and finding a permanent, unconditional officer and director bar was appropriate).

B. Disgorgement

The SEC also seeks to disgorge the Entity Defendants, jointly and severally, of $17,786,703, Lee of $2,687,061, CBE of $2,220,000.[2] Mot. at 15-22.

1. <u>Entity Defendants</u>

a. Reasonable Approximation

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[2] The SEC seeks prejudgment interest, Mot. at 21-22, to which Defendants raise no objection, except for CBE which contends it should not be liable for any disgorgement. Opp'n at 5.

The SEC relies on the declaration of Jamie C. Wohlert, a certified public accountant employed with the Division of Enforcement ("Wohlert Declaration"). Dkt. No. 145-3 ¶ 1. Wohlert reviewed various "[f]inancial account records used by APB and its agents and produced to the SEC by" various financial institutions, "[r]eports created by the SEC's retained expert witnesses," and "[o]ther documents produced to the SEC during the SEC's pre-suit investigation and/or in discovery in the above-captioned case." *Id.* ¶ 5.

Wohlert identified $21,186,000 in investor funds raised in connection with the Initial offering and Stonecrest offering. *See id.* ¶ 15. Wohlert then deducted the following legitimate business expenses: $1,192,950 for improvements to the Oregon Farm, $393,120 for payments to Stonecrest Capital Markets, Inc. to market offering, $3,199,754 for investor payments, $1,508,806 for expenditures related to unsuccessful attempts to expand APB's operations, $1,860,093 for calculated net profits for Lee, $581,000 for calculated net profits for Rice, and $2,220,000 for calculated disgorgement for CBE. *Id.* ¶ 16. Subtracting those deductions from $21,186,000 brought the total net profit in connection with the initial offering and Stonecrest offering to $10,230,276. *Id.* ¶ 14. Additionally, Wohlert identified $2,485,000 in investor funds raised in connection with the $5 Million Raise without any deduction of expenses. *Id.* ¶ 17. Finally, Wohlert identified $9,375,000 in investor funds raised in connection with the Garden Unit Offering. *Id.* ¶ 19. Wohlert then deducted the following legitimate business expenses: $377,489 for an expansion of the Oregon Farm, $3,099,117 for investor payments, and $826,968 for calculated disgorgement for calculated disgorgement for Lee. *Id.* ¶ 20. Subtracting those deductions from $9,375,000 brought the total net profit in connection with the Garden Unit offering to $5,071,427. *Id.* ¶ 18. In total, Wohlert calculated the total net profit for all four offerings was $17,786,703. *Id.* ¶ 21. Wohlert calculated the total prejudgment interest was $6,202,777. *Id.* ¶ 22. Thus, Wohlert calculated the total amount subject to disgorgement for the Entity Defendants was $23,989,480. *Id.* ¶ 23. The Court concludes this is a reasonable approximation of the Entity Defendants' profits. *See Platforms Wireless*, 617 F.3d at 1096 ("Disgorgement need be only a reasonable approximation of profits causally connected to the violation") (quotation marks omitted). The burden thus shifts to Defendants "to demonstrate that the disgorgement figure was not a reasonable approximation." *Id.* (quotation omitted).

Defendants argue that the investors understood that capital raised would be used for all purposes of the operations, and that there were legitimate business expenses totaling $75,063,881,[3] which if even discounted by half, would exceed the SEC's requested disgorgement amounts. Opp'n at 1; Dkt. No. 146-3, Patin Decl. ¶ 9. This includes $29,841,750 in expenses for APB, $21,776,634 in expenses for Urban Pharms, $23,430,584 in expenses for TSL, and $14,913 in expenses for DJ&S. According to an exhibit attached to the Patin Declaration purporting to provide a "Selected Expenses Summary prepared from the Intuit Enterprise Accounting System and reflected on a cash basis," these expenses are broken down into the following categories: payroll / salary & wages, vendor commission, legal & professional fees, debt / interest, supplies purchased, rents, capital expenditures, utilities, office supplies & expenses, travel & lodging, and auto reimbursements. *See* Dkt. No. 146-3 at 6. However, as the SEC argues, these expenses were not legitimate but rather were used to perpetuate a fraudulent operation.[4] *See* Reply at 2-3; *First Pac. Bancorp*, 142 F.3d at 1192 (affirming disgorgement award where investor money "put off a bank failure and enabled the Bank to remain in operation for two and a half more years" during which the defendant "milk[ed] the asset" by paying himself salaries, commissions, and fees).

Accordingly, the Court finds disgorgement in the amount of $23,989,480 by the Entity Defendants to be reasonable and warranted.

b. Joint and Several Liability

Defendants argue that the Court should not impose joint and several liability as to Urban Pharms, DJ&S, or TSL for false statements made by individuals primarily associated with APB.

"Generally, courts may not impose disgorgement on defendants for profits 'which have accrued to another, and in which they have no participation.'" *SEC v. Liu*, 2022 WL 3645063, at *3 (9th Cir. Aug. 24, 2022) (quoting *Liu*, 591 U.S. at 90). "But the common law does 'permit liability for partners engaged in concerted

[3] The Court notes that Defendants' Opposition references this total as $75,063,381, which the Court believes is in error given the figure included in the Patin Declaration and accompanying exhibit. *See* Patin Decl. ¶ 9; Dkt. No. 146-3 at 6.

[4] The SEC advances several other arguments which the Court need not reach, including that Defendants did claim investor money was needed for expansion rather than simply operations, that Defendants fail to support their 0.5x multiplier, that Defendants failed to produce disgorgement-related information in discovery, and that equity supports offsetting operational expenses with revenue generated from operations rather than investor proceeds.

wrongdoing.'" *Id.* (quoting *Liu*, 591 U.S. at 90); *see also SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191-92 (9th Cir. 1998) (entities or individuals that collaborate or have a close relationship in engaging in the violations of securities laws may be held jointly and severally liable for disgorgement).

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Here, Urban Pharms, DJ&S, and TSL were subsidiaries of APB for which APB, through Lee and Pallas, raised money. The Court finds that joint and several liability is reasonable and appropriate given these circumstances.

2. Lee

The SEC again relies on the Wohlert Declaration to calculate the net profits received by Lee. Wohlert Decl. ¶ 24. Wohlert reviewed materials from the summary judgment stage. *Id.* ¶ 25.

Wohlert calculated that Lee received $857,890 in excess compensation from 2017-2019 and 2022, wherein he received a salary of $311,090 in 2017, $354,000 in 2018, $327,250 in 2019, and $465,550 in 2022, but a reasonable salary was determined to be $150,000. *Id.* Wohlert also calculated that a total of $1,829,171 in personal expenditures were paid on behalf of Lee. *Id.* ¶ 26. These include expenditures on the Vanderbilt Hotel, other hotels / lodging, restaurant / groceries, spa / wellness, petty cash, personal (cleaners, etc.), clothing and department stores, flights for non-APB employees, payments to a personal assistant, and the Balboa Bay Club from 2017 to 2019, and expenditures on his wife, mother, and Bento prepaid cards in 2022. *Id.* In total, Wohlert calculated the total net profit between the excess compensation and personal expenditures was $2,687,061. *Id.* ¶ 27. Wohlert calculated the total prejudgment interest was $1,025,670. *Id.* Thus, the total amount subject to disgorgement for Lee is $3,712,731. The Court concludes this is a reasonable approximation of Lee's profits. The burden thus shifts to Defendants "to demonstrate that the disgorgement figure was not a reasonable approximation." *Id.* (quotation omitted).

Defendants argue that Lee's disgorgement amount should be reduced because a reasonable salary for his position should be $200,000, not $150,000, and because the actual salary amounts the SEC attributed to him for three of the years are incorrect. Opp'n at 2-3. As to Defendants' first argument, the SEC's $150,000 figure was determined from an expert witness who opined that a reasonable annual salary would be in the range of $150,000 to $250,000. *Id.* at 2. The SEC argues that Defendant fails to set forth any facts or evidence justifying a higher salary for Lee within the expert's range, and that a $150,000 salary was effectively a

$200,000 salary here because Lee failed to report the income to the IRS. Reply at 7. The Court finds that a salary of $150,000 is reasonable under the circumstances and agrees with the SEC that Defendants have failed to meet their burden of demonstrating that such a salary is unreasonable. As to Defendants' second argument, Defendants have failed to present any evidence that Lee's actual salary for the three years in question reflects the figures offered by Defendants in their Opposition, rather than the contradictory figures provided in a past sworn interrogatory response.

Accordingly, the Court finds disgorgement in the amount of $2,687,061 by Lee to be reasonable and warranted.

3. <u>CBE</u>

Courts may order disgorgement where a relief defendant (a) received ill-gotten gains and (b) had no legitimate claim to the funds. *See Sec. & Exch. Comm'n v. World Cap. Mkt., Inc.*, 864 F.3d 996, 1004 (9th Cir. 2017). The SEC must establish both elements by a preponderance of the evidence. *Sec. & Exch. Comm'n v. Sanchez-Diaz*, 88 F.4th 81, 89 (1st Cir. 2023).

The SEC again relies on the Wohlert Declaration to calculate the net profits received by CBE. Wohlert Decl. ¶¶ 28-31. Wohlert reviewed various materials which are attached to the Wohlert Declaration, namely payments to CBE from APB-affiliated accounts. *Id.* Wohlert calculated that CBE received $2,220,000 from APB which could be traced to investor funding sources. *Id.* ¶ 28. The SEC contends that this money was a gift to CBE President and CEO Ricky Castro, because Castro testified that APB's transfers "reimbursed" CBE for "loaning" millions of dollars to certain limited liability companies which were actually owned by CBE, and for which APB received nothing in return. Mot. at 21. CBE argues that Castro's testimony does not support the SEC's position, but rather shows that CBE only facilitated the eventual transfer of the money to another entity, PR-One. Opp'n at 4. The SEC responds that CBE failed to submit any evidence documenting that the money was actually sent to PR-One, and that Castro admitted that the money was for the benefit of CBE. Reply at 10.

However, the Court finds that the SEC has failed to meet its initial burden of establishing that CBE received these funds, as opposed to the funds ultimately being transferred to PR-One.[5] The excerpts of deposition testimony the SEC cites do not directly support such a contention, and the SEC fails to provide any documents or declaration testimony following a review of CBE's bank activity supporting the contention that the money APB sent to CBE was never then transferred to PR-One.

Accordingly, the Court DENIES the SEC's request for disgorgement as to CBE.

C. Monetary Penalties

1. <u>Lee</u>

The SEC seeks civil penalties from Lee equal to his unjust enrichment, or $2,687,061. Mot. at 23. To determine whether civil penalties are warranted, the Court must consider the *Murphy* factors it considered for injunctive relief. *See Husain*, 70 F.4th at 1184. For the same reasons discussed above, the *Murphy* factors weigh in favor of civil penalties against Lee.

Accordingly, the Court finds civil penalties against Lee are warranted in an amount equal to his pecuniary gain: $2,687,061.

2. <u>Pallas</u>

The SEC seeks the maximum statutory tier penalty of $236,451 for two different violations, reflecting that Pallas was involved in two different schemes, the $5 Million Raise and Garden Unit Offering, for a total penalty of $472,902. Mot. at 24. Defendants argue that only a single tier penalty is justified because Pallas did not profit from his actions. However, for the same reasons discussed above, the *Murphy* factors weigh in favor of civil penalties against Pallas, and given the prolonged and egregious nature of Pallas's conduct, tier-three penalties are warranted to deter similar future conduct. *See Murphy*, 50 F.4th at 847.

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[5] In briefing and at oral argument, the SEC argues that CBE failed to provide evidence confirming PR-One's eventual receipt of the funds other than speculative deposition testimony from Castro. However, it is the SEC's initial burden to establish that the relief defendant in question, rather than some other entity, received ill-gotten gains.

Accordingly, the Court finds civil penalties against Pallas totaling $472,902 are warranted.

3. Entity Defendants

The SEC seeks the following civil penalties from the Entity Defendants: $4,729,004 against each of APB and Urban Pharms, reflecting the maximum, inflation-adjusted third-tier corporate penalty for four violations corresponding to four separate schemes, because APB and Urban Pharms purported to raise money in four different fraudulent offerings; $2,364,502 against TSL, reflecting the maximum, inflation-adjusted third-tier corporate penalty for two violations corresponding to two schemes, because APB purported to raise money on behalf of TSL in two fraudulent offerings (Initial Offering and Stonecrest Offering); and $1,182,251 for DJ&S, reflecting the maximum, inflation-adjusted third-tier penalty for one violation corresponding to one scheme because DJ&S purported to raise money in one offering, the Garden Unit Offering. Mot. at 24-25.

Defendants argue that the proposed penalties as to Urban Pharms, DJ&S, and TSL are unnecessarily punitive because there is no evidence that any of these entities participated in the false statements made by the individual defendants. Opp'n at 5. However, there has been a finding of fraud as to these defendants. The amount of civil penalties sought by the SEC is the amount available per-violation against non-natural persons. *See* 17 C.F.R. § 201.1001(b). "District courts have discretion to determine what constitutes a 'violation,'" *Murphy*, 50 F.4th at 848, including based on the number of investors or the number of months of the scheme. The SEC seeks a modest amount in comparison.

Accordingly, the Court finds the civil penalties requested by the SEC as to each of the Entity Defendants are warranted.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** the SEC's Motion for Remedies. The court **ORDERS** the SEC to lodge a proposed judgment consistent with this Order within **ten (10) days** of the date of this Order. Defendants may then file any objections to the proposed judgment within **ten (10) days** of the SEC filing the proposed judgment.

IT IS SO ORDERED.