

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 6:19-cv-1843-Orl-37LRH

ANDRES FERNANDEZ; and EDISON
DENIZARD,

Defendants.

ORDER

Before the Court is Plaintiff's notice of partial settlement and request for a stay. (Doc. 30 ("**Motion**").) Plaintiff and Defendant Edison Denizard ("**Denizard**") have reached a settlement on non-monetary relief. (*Id.*) Denizard has consented to the entry of a permanent injunction. (*Id.*; *see also* Doc. 30-1.) Plaintiff also requests a stay as to Denizard until the parallel criminal proceeding is resolved.¹ (Doc. 30, pp. 1-2.) On review, the Motion is granted in part—the Court grants the stay but will modify the proposed injunction and enter judgment once all aspects of the case have been resolved.

It is **ORDERED AND ADJUDGED** Plaintiff's Notice of Partial Settlement with Defendant Edison Denizard and Unopposed Request for Stay (Doc. 30) is **GRANTED, as follows:**

¹ Plaintiff is seeking default judgment against the other defendant in this case, Defendant Andres Fernandez. (Doc. 31.)

The Securities and Exchange Commission having filed a Complaint and Denizard having entered a general appearance; consented to the Court's jurisdiction over Denizard and the subject matter of this action; consented to entry of this Judgment, waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

PERMANENT INJUNCTION

A. Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 of the Exchange Act

It is **ORDERED AND ADJUDGED** that Denizard 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 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- a) to employ any device, scheme, or artifice to defraud;
- b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

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:

- (A) any investment in securities,
- (B) the prospects for success of any company,
- (C) the use of investor funds,
- (D) compensation to any person, or
- (E) the misappropriation of investor funds or investment proceeds.

It is further **ORDERED AND ADJUDGED** 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) Denizard's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Denizard or with anyone described in (a).

B. Section 17(a) of the Securities Act of 1933 (the "Securities Act")

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

- a) to employ any device, scheme, or artifice to defraud;
- b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to

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

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

- (A) any investment in securities,
- (B) the prospects for success of any company,
- (C) the use of investor funds,
- (D) compensation to any person, or
- (E) the misappropriation of investor funds or investment proceeds.

It is further **ORDERED AND ADJUDGED** 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) Denizard's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Denizard or with anyone described in (a).

C. Sections 5 of the Securities Act

It is further **ORDERED AND ADJUDGED** that Denizard is permanently restrained and enjoined from violating Sections 5 of the Securities Act [15 U.S.C. § 77e]

by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

It is further **ORDERED AND ADJUDGED** 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) Denizard's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or

participation with Denizard or with anyone described in (a).

II.

DISGORGEMENT, PREJUDGMENT INTEREST AND CIVIL PENALTY

It is further **ORDERED AND ADJUDGED** that Denizard shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from June 1, 2017 based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Denizard will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Denizard may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

III.

INCORPORATION OF CONSENT

It is further **ORDERED AND ADJUDGED** that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Denizard shall comply with all of the undertakings and agreements set forth therein.

IV.

BANKRUPTCY NONDISCHARGEABILITY

It is further **ORDERED AND ADJUDGED** that for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Denizard, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Denizard under this Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Denizard of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

V.

RETENTION OF JURISDICTION

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

VI.

STAY

It is further **ORDERED AND ADJUDGED** that the Clerk is **STAY** the case as to Defendant Edison Denizard.

By Tuesday, **February 2, 2021** and every ninety (90) days thereafter, Plaintiff and Mr. Denizard are **DIRECTED** to file a status report regarding the criminal proceeding.

DONE AND ORDERED in Chambers in Orlando, Florida, on November 5, 2020.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record