No. _____

IN THE
Supreme Court of the United States

ANGELIQUE DE MAISON,
Petitioner,
v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

JEFFREY B. COOPERSMITH
ORRICK HERRINGTON & SUTCLIFFE LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104
(206) 839-4339
jcoopersmith@orrick.com

LAUREN B. RAINWATER
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104
(206) 622-3150
laurenrainwater@dwt.com

Counsel of Record for Petitioner
Angelique de Maison

QUESTIONS PRESENTED

Whether, as this Court will be deciding in the petition now before the Court in *Liu v. Securities & Exchange Commission*, 754 F. App'x 505 (9th Cir. 2018), *cert. granted*, 2019 WL 5659111, at *1 (U.S. Nov. 1, 2019) (No. 18-1501) (the "Liu Petition"), the Securities and Exchange Commission may seek and obtain disgorgement from a court as "equitable relief" for a securities law violation even though this Court has determined that such disgorgement is a penalty.

PARTIES TO THE PROCEEDINGS

Petitioner Angelique de Maison was a defendant and cross-defendant in the district court proceedings and appellant in the court of appeals proceedings.

Respondent Securities and Exchange Commission was the plaintiff in the district court proceedings and the appellee in the court of appeals proceedings.

Peter Voutsas and Ronald Loshin were defendants in the district court proceedings but did not participate in the court of appeals proceedings. Upon information and belief, Mr. Voutsas and Mr. Loshin have no interest in the outcome of the petition.

Jason Cope, Izak Kirk de Maison, Louis Mastromatteo, Trish Malone, Kieran T. Kuhn, Gepco, Ltd., Sunatco Ltd., Suprafin Ltd., Workldrbidge Partners, Traverse International, Small Cap Resource Corp., Gregory Goldstein, Stephen Wilshinsky, Talman Harris, William Scholander, Justin Esposito, Kona Jones Barbera, and Victor Alfata were defendants and cross-defendants in the district court proceedings but did not participate in the court of appeals proceedings. Upon information and belief, these parties have no interest in the outcome of the petition.

Jack Tagliaferro was a defendant and cross claimant in the district court proceedings but did not participate in the court of appeals proceedings. Upon information and belief, Mr. Tagliaferro has no interest in the outcome of the petition.

TABLE OF CONTENTS

Page

Statutory Provisions Involved:

TABLE OF AUTHORITIES

Page(s)

Cases

Constitution, Statues and Regulations

PETITION FOR A WRIT OF CERTIORARI

Petitioner Angelique de Maison respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The summary order of the court of appeals (App. 1a–9a) is unpublished but is available at 785 F. App'x. 3. The order of the district court (App. 10a–37a) is unpublished but is available at 2018 WL 3628899.

JURISDICTION

The court of appeals entered its judgment on August 30, 2019, and denied a petition for rehearing on November 19, 2019 (App. 42a–43a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Securities Act of 1933, 15 U.S.C. § 77a et seq., and the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., are reproduced at App. 44a–54a.

INTRODUCTION

This petition raises the identical issue that this Court will decide in the Liu Petition concerning whether the federal courts have authority to order disgorgement in civil enforcement cases brought by the Securities and Exchange Commission ("SEC") after the Supreme Court's holding in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017).

In this case, the district court awarded, and the Second Circuit affirmed an award of, disgorgement against Petitioner Angelique de Maison ("Ms. de Maison") in a civil enforcement case brought by the SEC. However, such an award of disgorgement conflicts with the decision of this Court in *Kokesh*. In *Kokesh*, the Supreme Court analyzed the characteristics of SEC disgorgement and concluded

that "SEC disgorgement constitutes a penalty." *Id.* at 1642. The Second Circuit panel believed itself bound by prior Second Circuit decisions, but recognized that only the Second Circuit sitting en banc or this Court could rectify this conflict. The Second Circuit declined to review the issue en banc.

The Court should grant Ms. de Maison's Petition and hold it in abeyance until the Court renders its decision on the Liu Petition.

STATEMENT

On September 18, 2014, the SEC brought a civil action in the U.S. District Court for the Southern District of New York against Ms. de Maison and several other defendants relating to a series of alleged fraudulent schemes involving Ms. de Maison's then-husband Izak Zirk Engelbrecht. The SEC alleged various violations of the Securities and Exchange Act of 1934.

On November 5, 2015, Ms. de Maison entered into a consent agreement with the SEC. Per the consent agreement, Ms. de Maison neither admitted nor denied the allegations and consented to the entry of a final judgment as to liability in an agreed-upon form. The consent agreement also provided for the award of disgorgement, prejudgment interest, and a civil penalty, which the SEC could seek in subsequent motion proceedings. On December 23, 2015, the district court entered a final judgment as to liability only.

On January 26, 2018, the SEC filed a motion for monetary remedies, seeking certain penalties, disgorgement, and interest from Ms. de Maison. Ms. de Maison opposed that request. Among other things, Ms. de Maison argued in the district court that disgorgement could not be awarded in SEC cases post-*Kokesh*. On July 30, 2018, the district court ordered Ms. de Maison to pay $4,240,049.30 in disgorgement, $4,240,049.30 as a civil monetary penalty, and prejudgment interest in an amount to be determined. App. 36a. On August 8, 2018, the district court

entered a final judgment requiring Ms. de Maison to pay those amounts, plus $913,818.80 in prejudgment interest, for a total of $9,393,917.40. App. 38a. The district court based the civil monetary payment amount on the amount of disgorgement it awarded. App. 36a.

On August 29, 2018, Ms. de Maison filed a notice of appeal, seeking review of that order and judgment. On August 30, 2019, the Second Circuit entered the Summary Order, affirming the district court's order and judgment. App. 7a. In affirming the award, the panel reasoned that it was bound by prior panel decisions and that accordingly the issue must be considered by the Second Circuit en banc or by the Supreme Court. App. 4a–5a ("De Maison's argument concerning *Kokesh* must therefore await consideration by this Court en banc or by the Supreme Court.").

On October 5, 2019, Ms. de Maison filed a petition seeking a rehearing en banc by the Second Circuit. On November 19, 2019, the Second Circuit denied Ms. de Maison's petition for rehearing en banc. App. 43a.

On November 1, 2019, this Court granted a petition on this identical issue in *Liu v. SEC*, 754 F. App'x 505 (9th Cir. 2018), *cert. granted*, 2019 WL 5659111, at *1 (U.S. Nov. 1, 2019) (No. 18-1501).

REASONS FOR GRANTING THIS PETITION

Based on the pending Liu Petition, the Court is fully versed on the ample ground for granting this petition to consider and resolve the important question presented. In the interests of judicial economy, Ms. de Maison will not restate the compelling reasons for the Court to consider a question it has already agreed to resolve. As demonstrated by the Statement and the lower court decisions appended, the question of whether a district court may award disgorgement as an equitable

remedy following the decision in *Kokesh* will be answered by the Court's ruling on the Liu Petition.

Accordingly, the Court should grant Ms. de Maison's Petition and hold it in abeyance until the Court renders its decision on the Liu Petition. Following a decision in favor of Petitioner Liu, the Court should vacate the Second Circuit's judgment, and remand the matter for further proceedings consistent with the Court's decision.

Should the Court decline to reach the merits of the Liu Petition for any reason, the Court should consider the merits of this Petition for the reasons set forth in the Liu Petition.

CONCLUSION

The petition for writ of certiorari should be granted and held in abeyance pending a decision in the Liu Petition.

Respectfully submitted,

Jeffrey B. Coopersmith
ORRICK HERRINGTON & SUTCLIFFE LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104
(206) 839-4339
jcoopersmith@orrick.com

Counsel of Record for Petitioner

Lauren B. Rainwater
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104
(206) 622-3150
laurenrainwater@dwt.com

February 14, 2020

18-2564
SEC v. de Maison

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of August, two thousand nineteen.

PRESENT:

PETER W. HALL,
DEBRA ANN LIVINGSTON,
Circuit Judges,
CLAIRE R. KELLY,*
Judge.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

v. No. 18-2564

ANGELIQUE DE MAISON,

Defendant-Cross Defendant-Appellant,

PETER VOUTSAS, RONALD LOSHIN,

Defendants,

---

* Judge Claire R. Kelly, of the United States Court of International Trade, sitting by designation.

JASON COPE, IZAK ZIRK DE MAISON, FKA IZAK ZIRK ENGELBRECHT, LOUIS MASTROMATTEO, TRISH MALONE, KIERAN T. KUHN, GEPCO, LTD., SUNATCO LTD., SUPRAFIN LTD., WORLDBRIDGE PARTNERS, TRAVERSE INTERNATIONAL, SMALL CAP RESOURCE CORP., GREGORY GOLDSTEIN, STEPHEN WILSHINSKY, TALMAN HARRIS, WILLIAM SCHOLANDER, JUSTIN ESPOSITO, KONA JONES BARBERA, VICTOR ALFAYA,

Defendants-Cross Defendants,

JACK TAGLIAFERRO,

Defendant-Cross Claimant-Cross Defendant.

Appearing for *Appellee*:	JEFFREY BRUCE COOPERSMITH (Lauren B. Rainwater, *on the brief*), Davis Wright Tremaine LLP, Seattle, WA.
Appearing for *Appellant*:	ROBERT B. STEBBINS, General Counsel (Michael A. Conley, Solictor, Theodore Weiman, Senior Litigation Counsel, John B. Capehart, Senior Counsel), U.S. Securities and Exchange Commission, Washington, DC.

Appeal from a judgment of the United States District Court for the Southern District of New York (Cote, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment entered on August 8, 2018, is **AFFIRMED**.

Defendant-Cross Defendant-Appellant Angelique de Maison appeals from a judgment of the district court entered against her following a consent agreement with Plaintiff-Appellee United States Securities and Exchange Commission ("SEC"). The

district court ordered de Maison to disgorge $4,240,049.30 in ill-gotten gains, plus prejudgment interest, and imposed a third-tier civil penalty of $4,240,049.30. De Maison appeals, principally arguing that the district court was without authority to impose disgorgement following the Supreme Court's decision in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017). De Maison also presses various challenges to the district court's remedies calculations. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

"Once the district court has found federal securities law violations, it has broad equitable power to fashion appropriate remedies . . . ." *SEC v. Frohling*, 851 F.3d 132, 138 (2d Cir. 2016) (quoting *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996)). "The court's choice of remedies is reviewed for abuse of discretion." *Id.* at 139. "Under this standard, we will reverse only if we have a definite and firm conviction that the court below committed a clear error of judgment in the conclusion that it reached upon a weighing of the relevant factors." *SEC v. Rajaratnam*, 918 F.3d 36, 41 (2d Cir. 2019) (quoting *SEC v. Bankosky*, 716 F.3d 45, 47 (2d Cir. 2013)).

I.

The meat of de Maison's argument on appeal is grounded in *Kokesh*.[1] She argues that disgorgement has historically been rooted in equity. *See, e.g.*, *SEC v. Tex. Gulf Sulfur*

[1] The SEC insists that de Maison cannot raise a challenge to the fact of disgorgement, as opposed to the disgorgement amount, because of her consent agreement. We need not resolve this issue because we conclude that de Maison's challenge is currently foreclosed.

Co., 446 F.2d 1301, 1308 (2d Cir. 1971). She further contends that equitable relief does not include penalties. *See Tull v. United States*, 481 U.S. 412, 422 (1987). Finally, de Maison insists that *Kokesh* must be read as holding that disgorgement in the securities enforcement context is always a penalty. *See Kokesh*, 137 S. Ct. at 1645. Therefore, according to de Maison, disgorgement is no longer an authorized remedy.

Nonetheless, "[i]t is a longstanding rule of our Circuit that a three-judge panel is bound by a prior panel's decision until it is overruled either by this Court sitting *en banc* or by the Supreme Court." *Doscher v. Sea Port Grp. Sec., LLC*, 832 F.3d 372, 378 (2d Cir. 2016). Although an exception to this rule is recognized "where an intervening Supreme Court decision casts doubt on the prior ruling" such that the intervening decision has "'broke[n] the link . . . on which we premised our [prior] decision' or 'undermine[d] [an] assumption' of that decision," *id.* (alterations in original) (quoting *Finkel v. Stratton Corp.*, 962 F.2d 169, 174–75 (2d Cir. 1992); *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 274 (2d Cir. 2005)), we cannot agree with de Maison that the Supreme Court in *Kokesh* implicitly did what it *explicitly* said it was not doing. *See Kokesh*, 137 S. Ct. at 1642 n.3 ("Nothing in this opinion should be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context. The sole question presented in this case is whether disgorgement, as applied in SEC enforcement actions, is subject to § 2462's limitations period.") We conclude *Kokesh* does not constitute an intervening decision

such that our precedent on disgorgement in SEC enforcement proceedings is disturbed. De Maison's argument concerning *Kokesh* must therefore await consideration by this Court en banc or by the Supreme Court.

II.

De Maison next challenges the district court's calculation of the amount of disgorgement. "It is well established that district courts have broad discretion to impose disgorgement liability and that liability should fall upon the wrongdoer in cases of uncertainty." *SEC v. Contorinis*, 743 F.3d 296, 304–05 (2d Cir. 2014) (citation omitted). "The amount of disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation; any risk of uncertainty in calculating disgorgement should fall upon the wrongdoer whose illegal conduct created that uncertainty." *Id.* at 305 (cleaned up) (quoting *First Jersey*, 101 F.3d at 1475).

De Maison points out that (1) the SEC alleged that only some of the proceeds from the illegal securities sales were used by de Maison to pay personal expenses, (2) that $3.4 million of the proceeds from the sale of Casablanca securities actually went to Casablanca, (3) that some of the investors were repaid, and (4) that Engelbrecht had sole control over some of the proceeds. These arguments are a collective distraction on many levels. In the main, de Maison simply confuses what makes the gains in question "ill-gotten" in the first place. It is not about where the money went, it is about the fact that she was selling unregistered securities and was not a registered broker-dealer. *See* 15 U.S.C. §§ 77e(a),

(c), 78o(a). That is, the taint of "ill-gotten" is a result of the securities being sold at all by de Maison, not a result of her subsequent use of the funds.

What is more, de Maison's argument that she should be forced to disgorge only the amounts by which she personally profited finds no support in our jurisprudence. As this Court explained in *Contorinis*, this argument

> seeks to undermine [the district court's] discretion by conflating a central, well-established principle in disgorgement law—that the court may [] exercise its equitable power only over property causally related to the wrongdoing—with the proposition, unsupported in our case law, that the wrongdoer need disgorge only the financial benefit that accrues to [her] personally.

Contorinis, 743 F.3d at 305 (internal quotation marks and citation omitted).[2]

III.

Finally, de Maison insists that no prejudgment interest was warranted because disgorgement is not an available remedy and, even if it were, the district court failed to account for the fact that its asset-freeze order covered *all* of de Maison's assets.[3] The first

[2] De Maison also challenges the use of the full amount of investor loss to calculate her third-tier civil penalty. Although the amount of a civil penalty, unlike the amount of disgorgement, is constrained by the statutory language authorizing the penalty, *see Rajaratnam*, 918 F.3d at 42–43, we nonetheless conclude that this challenge fails largely for the same reason as does de Maison's challenge to the disgorgement amount, *see SEC v. Razmilovic*, 783 F.3d 14, 38 (2d Cir. 2013) (noting, in that case, that the statutory maximum civil penalty measured by "gross amount of pecuniary gain" was equal to the "disgorgeable gain"). And de Maison's argument that the district court failed to give adequate consideration to mitigating factors when calculating the civil penalty is belied by the record.

[3] The district court did exclude from prejudgment interest $612,551.64 in funds that were explicitly frozen.

argument fails because de Maison's *Kokesh* argument is not cognizable. The second is frivolous. "[I]t is within the discretion of a court to award prejudgment interest on the disgorgement amount for the period during which a defendant had the use of [her] illegal profits," and an award of prejudgment interest covering funds subject to an asset freeze "would be inappropriate" because "the defendant has already, for that period, been denied the use of those assets." *SEC v. Razmilovic*, 738 F.3d 14, 36 (2d Cir. 2013). While this is all well and good, de Maison does not identify any assets the benefit of which she was denied because of the asset-freeze order.[4]

We have considered de Maison's remaining arguments and find them to be without merit. The judgment of the district court is **AFFIRMED**.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

[4] De Maison attempts to argue that, because her bank accounts were frozen, she was somehow unable to accept rent on her properties and was thereby denied the benefit of those properties (and somehow the SEC was responsible for millions in lost equity, to boot). The record simply does not support this allegation.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

ROBERT A. KATZMANN
CHIEF JUDGE

Date: August 30, 2019
Docket #: 18-2564cv
Short Title: Securities and Exchange Commis v. Cope

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 14-cv-7575
DC Court: SDNY (NEW YORK CITY)
DC Judge: Cote
DC Judge: Lehrburger

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:
* be filed within 14 days after the entry of judgment;
* be verified;
* be served on all adversaries;
* not include charges for postage, delivery, service, overtime and the filers edits;
* identify the number of copies which comprise the printer's unit;
* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
* state only the number of necessary copies inserted in enclosed form;
* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
* be filed via CM/ECF or if counsel is exempted with the original and two copies.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

ROBERT A. KATZMANN
CHIEF JUDGE

Date: August 30, 2019
Docket #: 18-2564cv
Short Title: Securities and Exchange Commis v. Cope

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 14-cv-7575
DC Court: SDNY (NEW YORK CITY)
DC Judge: Cote
DC Judge: Lehrburger

VERIFIED ITEMIZED BILL OF COSTS

Counsel for
_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the
_____

and in favor of
_____

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____ ____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

_____
Signature

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	14cv7575 (DLC)
-v-	OPINION AND ORDER
JASON COPE, IZAK ZIRK DE MAISON (F/K/A) IZAK ZIRK ENGELBRECHT), GREGORY GOLDSTEIN, STEPHEN WILSHINSKY, TALMAN HARRIS, WILLIAM SCHOLANDER, JACK TAGLIAFERRO, VICTOR ALFAYA, JUSTIN ESPOSITO, KONA JONES BARBERA, LOUIS MASTROMATTEO, ANGELIQUE DE MAISON, TRISH MALONE, KIERNAN T. KUHN, PETER VOUTSAS, RONALD LOSHIN, GEPCO, LTD., SUNATCO LTD., SUPRAFIN LTD., WORLDBRIDGE PARTNERS, TRAVERSE INTERNATIONAL, and SMALL CAP RESOURCE CORP., Defendants,	
And	
ANGELIQUE DE MAISON, Relief Defendant.	

APPEARANCES:

For the Securities and Exchange Commission:
Howard A. Fischer
John O. Enright
Brookfield Place, 200 Vesey Street,
New York, New York, 10281

For Trish Malone:
Trish Malone
Pro Se

For Angelique de Maison:
Jeffrey B. Coopersmith
Lauren Rainwater

Davis Wright Tremaine LLP
1201 Third Avenue, Ste. 2200
Seattle, Washington 98101

DENISE COTE, District Judge:

Pursuant to the judgments entered against them on consent, the Securities and Exchange Commission ("SEC") seeks an assessment of civil penalties against three individuals -- Angelique de Maison, Trish Malone, Louis Mastromatteo -- and one entity, Traverse International. For the reasons that follow, the four defendants are ordered to pay disgorgement, prejudgment interest, and civil penalties.

BACKGROUND

The above-captioned case, first brought by the SEC on September 18, 2014, arises out of a series of fraudulent schemes conducted by the defendants -- masterminded by defendant Izak Zirk de Maison F/K/A/ Izak Zirk Engelbrecht ("Engelbrecht") -- between 2008 and 2014.[1] In general, the SEC alleges that

[1] This case is related to prior securities fraud litigation before this Court. See generally SEC v. Milan Capital Group, Inc., 00cv108 (DLC), 2000 WL 1682761 (S.D.N.Y. Nov. 9, 2000). That litigation largely centered around the fraudulent activity of Jason Cope ("Cope") and, later, the SEC's difficulty in recovering from Cope. Cope is a defendant in the instant litigation and has pleaded guilty to related criminal conduct in the Northern District of Ohio. Judgment in this civil action was entered against Cope on December 17, 2015.

Englebrecht, with the aid of the co-defendants and others, would cause corporations ("Fraudulent Issuers")[2] to issue tens of millions of shares of restricted stock to himself and his nominees, which he would then use for illegal distributions.

On October 22, 2014, after a conference held with the SEC and counsel representing three defendants,[3] the Court entered a preliminary injunction order, enjoining the defendants from committing federal securities violations and freezing the assets of certain defendants and their spouses, including de Maison, Mastromatteo, and Traverse (the "Freeze Order").[4] On June 15, 2015, after continuing its investigation into the alleged fraud, the SEC filed an Amended Complaint. The Amended Complaint expanded the scope of the conduct charged: defendants were added, the number of Fraudulent Issuers increased, the time period of the allegedly violative conduct widened, and the

[2] The Fraudulent Issuers were: Lenco Mobile Inc. ("Lenco"), Kensington Leasing Inc. ("Kensington"), Wikifamilies Inc. ("Wikifamilies"), Casablanca Mining Ltd. ("Casablanca"), Lustros Inc. ("Lustros"), and Gepco, Ltd. ("Gepco").

[3] Counsel for defendants Engelbrecht, Sunatco, and Suprafin appeared. Sunatco and Suprafin were entities controlled by Engelbrecht. Final judgment was entered against Engelbrecht, Sunatco, and Suprafin on October 13, 2015.

[4] Malone was not subject to the Freeze Order. On December 23, 2016 the Freeze Order was modified to allow de Maison to pay $93,478.65 in attorneys' fees to Davis Wright Tremain and for the payment of $25,000 to de Maison as compensation for her efforts in connection with the sale of real estate.

amount of relief sought increased. Mastromatteo and Traverse answered the Amended Complaint on September 18. On October 7, the SEC, in a status letter, informed the Court that it had reached settlements or was engaged in settlement discussions with multiple defendants, including de Maison.

Judgment against Malone was entered October 8, 2015. Judgment was entered against de Maison on December 23, 2015. Judgment was entered against Mastromatteo and Traverse on January 4, 2016. Along with each respective judgment, the Court so ordered a Consent between the SEC and each settling defendant.

Pursuant to the terms of their respective Judgment and Consent, Malone and de Maison agreed to eventually pay disgorgement of their ill-gotten gains, along with prejudgment interest, and a civil penalty. Mastrometteo and Traverse's Judgment noted the following:

> The Court shall determine whether it is appropriate to order Defendants to 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)]. If it is determined that such disgorgement, prejudgment interest, and a civil penalty is warranted, the Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission.

(Emphasis supplied.) In the Consent signed by Mastromatteo (in his individual capacity and in his representative capacity on behalf of Traverse), defendants "agree[d] that the Court shall

order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant" to the relevant statutes. (Emphasis supplied.) All defendants agreed that "for the purposes of a [an SEC motion for disgorgement and/or civil penalties], the allegations of the Complaint shall be accepted and deemed as true by the Court."

On January 26, 2018, the SEC moved for monetary relief against de Maison, Malone, Traverse, and Mastromatteo.[5] Specifically, the SEC requests disgorgement of ill-gotten gains in the amount of $4,240,049.30 from de Maison, $394,741.24 from Malone, $58,753 from Mastromatteo and Traverse, and that each defendant pay prejudgment interest on their respective disgorgement sums. The SEC has also asked that the Court impose civil money penalties. The SEC has not requested a specific sum for those civil penalties, but has suggested multiple methods of

[5] The SEC has not moved for monetary relief against ten defendants whose claims were settled. Those defendants have all pleaded guilty to conduct relating to matters alleged in the SEC's Amended Complaint in a criminal case before the Northern District of Ohio. The SEC does not seek relief against those defendants in light of the orders of restitution and prison sentences imposed against them. Two other defendants, whose claims were also settled, have not yet been sentenced: Kona Jones Barbera and Jason Cope. Barbera's sentencing has been rescheduled to August 2, 2018; Cope's sentencing has recently been rescheduled to August 10, 2018. The SEC expects that any sentence imposed on Cope and Barbera will include restitution, and thus has not asked for disgorgement or civil penalties to be imposed. The SEC has reserved the right to move for such penalties if the restitution orders are less than the anticipated disgorgement amount.

calculation. Malone and de Maison both oppose the imposition of disgorgement and civil penalties. Mastromatteo and Traverse have not opposed the SEC's motion. A summary of each of the defendant's underlying conduct relevant to the disgorgement and civil penalties the SEC seeks, taken from the Amended Complaint, follows.

I. De Maison

De Maison, Engelbrecht's wife, sought out investors to purchase unregistered securities in two of the Fraudulent Issuers, Kensington and Casablanca. She raised approximately $1 million for Kensington, and $3.5 million for Casablanca. De Maison did not transfer all proceeds from those investments to the companies as promised, but used some of the proceeds to pay her own personal expenses and diverted other proceeds to other entities associated with the scheme. De Maison advised investors on the merits of potential investments and the companies she was advertising. Investors lost their entire investments in Casablanca and Kensington. She also arranged for the execution of the governing agreements and the mailing of stock certificates to investors. The SEC identifies $748,000 in ill-gotten gains from investments related to Kensington, and $3,456,049.30 from investments related to Casablanca, for a total of $4,240,049.30.

De Maison made materially misleading statements concerning another company of which she was an officer, Gepco. De Maison provided quotes concerning the sale and purchase of diamonds for a Gepco press release. De Maison omitted material facts, including that she was personally involved with the relevant purchases and sales. The SEC does not, in the instant motion, identify any ill-gotten gains from de Maison's involvement with Gepco.

On December 23, 2015, the Court entered a partial judgment against de Maison, accompanied by her signed Consent. In that Consent, she agreed to be enjoined from violating Sections 5, 17(a)(1), and 17(a)(3) of the Securities Act; and Sections 10(b), 15(a), and 16(a) of the Exchange Act, and Rule 10b-5 thereunder.

II. Malone

Malone served as the Chief Financial Officer ("CFO") for several of the Fraudulent Issuers -- Lustros, Kensington, Wikifamiles, and Gepco -- and also held positions at a number of the other companies alongside Engelbrecht. In her role as CFO, Malone engaged in multiple unregistered securities offerings. The SEC seeks ill-gotten gains in the form of Malone's salary during the periods she served as an officer of the Fraudulent Issuers during unregistered offerings.

Malone was at the center of many of Engelbrecht's schemes and fraudulent transactions. For example, Malone helped to merge Wikifamilies, at the time a shell company, into new company, rename it, and conduct a "reverse merger," allowing the shell company to issue over 30 million shares of common stock, including to herself and other co-defendants. Malone also served as president, CFO, and secretary of Gepco and facilitated the issuance of shares to Jason Cope, a co-defendant in this action, and other individuals to liquidate in the open market. Neither Gepco nor Wikifamilies, at the time, had registered any of their securities with the SEC and no exemption from the standard registration requirements applied.

The SEC has calculated $394,741.24 in ill-gotten gains from the salary payments Malone received for her service as CFO of the various companies. Specifically, the SEC requests disgorgement of $4,615.39, Malone's pay for a week in May 2011, during which Wikifamilies issued 31.5 million shares of unregistered securities; disgorgement of $309,783.85, the sum of Malone's pay between June 2012 and January 2014, during which time she was involved in the offering of unregistered shares of Lustros; and disgorgement of $80,342.00, Malone's pay between February and September 2014, during which time she participated in the unregistered offerings of Gepco securities.

On October 8, 2015, the Court entered a partial judgment

against Malone, accompanied by her signed Consent. In that Consent she agreed to be enjoined from violating Sections 5, 17(a)(1), and 17(a)(3) of the Securities Act; and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

III. Mastromatteo and Traverse

Mastromatteo, individually and through his corporation Traverse, participated in a fraudulent scheme to acquire and sell more than 2.5 million shares of Gepco stock in an unregistered offering, after which Mastromatteo funneled most of the proceeds to Cope. Cope used the proceeds to pay a judgment to the SEC that had previously been entered against him by this Court in the Milan litigation. In return, Cope made payments back to Mastromatteo through Traverse. The SEC seeks $58,753 in ill-gotten gains, the amount Mastromatteo allegedly received in payments from Cope.

On January 5, 2016, the Court entered a partial judgment against Mastromatteo and Traverse, accompanied by a signed Consent. In the Consent, they agreed to be enjoined from violating Sections 5(a), 5(c), and 17(a) of the Securities Act; and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

PROCEDURAL HISTORY

The instant motion was filed on January 26, 2018. Malone, who is appearing pro se, submitted a response dated March 26.[6] De Maison filed a response on March 30. Mastromatteo and Traverse have not filed any response. The SEC filed its reply on April 27. Malone submitted an unsolicited sur-reply dated July 10.[7]

DISCUSSION

I. Disgorgement

"Once the district court has found federal securities law violations, it has broad equitable power to fashion appropriate remedies, including ordering that culpable defendants disgorge their profits." SEC v. Razmilovic, 738 F.3d 14, 31 (2d Cir. 2013) (citation omitted). Disgorgement is used "to prevent wrongdoers from unjustly enriching themselves through violations, which has the effect of deterring subsequent fraud." SEC v. Cavanagh, 445 F.3d 105, 117 (2d Cir. 2006). See also SEC v. Fischbach Corp., 133 F.3d 170, 175 (2d Cir. 1997). "[T]he

[6] The opposition was received and entered on the docket on March 30.

[7] Malone's letter was received and entered on the docket on July 13.

size of a disgorgement order need not be tied to the losses suffered by defrauded investors." Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC, 467 F.3d 73, 81 (2d Cir. 2006) (citation omitted). Courts may even require disgorgement "regardless of whether the disgorged funds will be paid to . . . investors as restitution." Kokesh v. SEC, 137 S. Ct. 1635, 1644 (2017) (citation omitted).

"The district court has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged." SEC v. Contorinis, 743 F.3d 296, 301 (2d Cir. 2014) (citation omitted). To calculate disgorgement, the district court engages in "factfinding . . . to determine the amount of money acquired through wrongdoing," and then issues "an order compelling the wrongdoer to pay that amount plus interest." Cavanagh, 445 F.3d at 116. The Supreme Court has recently noted that, at least for statute of limitations purposes, "SEC disgorgement is imposed for punitive purposes." Kokesh, 137 S. Ct. at 1643. Kokesh, however, did not disrupt settled precedent that courts "possess authority to order disgorgement in SEC enforcement proceedings." Id. at 1542 n.3.[8]

[8] The Second Circuit has noted that Kokesh "held that disgorgement ordered as a consequence of a violation of securities laws was a 'penalty' for purposes of 28 U.S.C. § 2462, which imposes a five-year statute of limitation . . . ."

"[B]ecause of the difficulty of determining with certainty the extent to which a defendant's gains resulted from his frauds . . . the court need not determine the amount of such gains with exactitude." Razmilovic, 738 F.3d at 31. The ordered disgorgement amount "need only be a reasonable approximation of profits causally connected to the violation; any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created that uncertainty." SEC v. First Jersey Securities, Inc., 101 F.3d 1450, 1475 (2d Cir. 1996) (citation omitted).

The SEC bears the burden "of establishing a reasonable approximation of the profits causally related to the fraud," but once it has met this burden, "the burden shifts to the defendant to show that his gains were unaffected by his offenses." Razmilovic, 738 F.3d at 31 (citation omitted). A defendant may not avoid disgorgement by arguing that he had limited or no control over the ill-gotten gains, or that the gains did not "personally accrue" to him. Contorinis, 743 F.3d at 306.

Additionally, an order which only accounts for the profits retained by the wrongdoer is an inadequate measure of disgorgement. See id. at 305-06 ("[T]he proposition, unsupported in our case law, that the wrongdoer need disgorge

---

United States v. Brooks, 872 F.3d 78, 91 (2d Cir. 2017) (emphasis supplied).

only the financial benefit that accrues to him personally . . . is without foundation."). Indeed, to limit disgorgement to the direct pecuniary benefit of the wrongdoer "would run contrary to the equitable principle that the wrongdoer should bear the risk of any uncertainty affecting the amount of the remedy" and "permit evasion of [the prohibited conduct] by allowing the direction of benefits to acquaintances." Id. at 306.

II. Prejudgment Interest

As with disgorgement, an award of prejudgment interest lies within the discretion of the court. See First Jersey, 101 F.3d at 1476. Generally, "an award of prejudgment interest may be needed in order to ensure that the defendant not enjoy a windfall as a result of its wrongdoing." Slupinski v. First Unum Life Ins. Co., 554 F.3d 38, 54 (2d Cir. 2009).

> In deciding whether an award of prejudgment interest is warranted, a court should consider (i) the need to fully compensate the wronged party for actual damages suffered, (ii) considerations of fairness and the relative equities of the award, (iii) the remedial purpose of the statute involved, and/or (iv) such other general principles as are deemed relevant by the court.

First Jersey, 101 F.3d at 1476 (citation omitted).

It is within the "discretion of a court to award prejudgment interest on the disgorgement amount for the period during which a defendant had use of [its] illegal profits." Razmilovic, 738 F.3d at 36. "In an enforcement action brought

by a regulatory agency, the remedial purpose of the statute takes on special importance." First Jersey, 101 F.3d at 1476. The Second Circuit has approved the use of the "IRS underpayment rate" to calculate prejudgment interest because that rate "reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendants received from its fraud." Id. When a defendant has had some or all of her assets frozen "at the behest of the government in connection with [an SEC civil] enforcement action, an award of prejudgment interest relating to those funds would be inappropriate" with respect to the period covered by the freeze order, because the defendant has already, for that period, "been denied the use of those assets." Razmilovic, 738 F.3d at 36.

III. Civil Money Penalty

The Securities Act and the Exchange Act authorize three tiers of civil penalties. See 15 U.S.C. § 77t(d); 15 U.S.C. § 78u(d)(3).

> Under each statute, a first-tier penalty may be imposed for any violation; a second-tier penalty may be imposed if the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; a third-tier penalty may be imposed when, in addition to meeting the requirements of the second tier, the violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

Razmilovic, 738 F.3d at 38 (citation omitted). At each tier, "for each violation, the amount of penalty shall not exceed the greater of a specified monetary amount or the defendant's gross amount of pecuniary gain; the amounts specified for an individual defendant for the first, second, and third tiers, respectively, are $5,000, $50,000, and $100,000." Id. (citation omitted).

Beyond these restrictions, the amount of the penalty is within "the discretion of the district court." Id. (citation omitted). The amount of the penalty should be determined "in light of the facts and circumstances" surrounding the violations. 15 U.S.C. § 78u(d)(3). Courts in this district have

> look[ed] to a number of factors, including (1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition.

SEC v. Tavella, 77 F. Supp. 3d 353, 362-63 (S.D.N.Y. 2015) (citation omitted).

While the SEC requests the imposition of a civil money penalty for each defendant, it does not request a specific penalty amount for any defendant. Instead, the SEC proposes

alternative methods of calculating a penalty: a penalty based on a defendant's pecuniary gain, a penalty assessed weighing the defendant's role in an illegal scheme, or a penalty based on the number of statutory or regularity violations the defendant has committed.

IV. Application

a. De Maison

The SEC seeks $4,240,049.30 in disgorgement, with prejudgment interest in the amount of $938,201.13, and the imposition of a money penalty.[9] $4,240,049.30 in disgorgement is a reasonable approximation of the extent to which de Maison profited from violations of the federal securities laws to which she has admitted. In light of the allegations in the Amended Complaint, which are deemed true for the purposes of this motion, the SEC has demonstrated that between July 2010 and October 2011 de Maisons's illegal conduct generated proceeds of $4,240,049.30.

De Maison argues that a disgorgement order is inappropriate. She argues that Engelbrecht, her husband at the time of the fraudulent scheme, had complete control over her

[9] The SEC clarified in its reply memorandum that it inadvertently included an investment of $200,000 in its original request for disgorgement.

financial accounts. She claims she did not understand that she was part of a fraud and that she simply carried out instructions given to her by Engelbrecht. De Maison signed her Consent on November 5, 2015. That document states "[d]efendant agrees that the Court shall order the payment of sums by which she has been unjustly enriched, disgorgement ill-gotten gains, prejudgment interest thereon and a civil penalty." That Consent further states, the "defendant will be precluded from arguing that she did not violate the federal securities laws as alleged in the complaint" and that for the purposes of the remedies motion that "the complaint shall be accepted as and deemed true by the Court." She is precluded from contesting her liability here.

With respect to the amount of disgorgement sought, de Maison does not dispute that she raised that amount of money in unregistered offerings. She argues instead that she did not receive $4.2 million in ill-gotten gains for her personal benefit. Further, she argues that the investment money was immediately diverted into other accounts over which she had no control. These arguments are unavailing. Disgorgement need not be tied to the direct benefit of the defendant, nor does the SEC need to demonstrate that the defendant exercised full control over the ill-gotten gains.

Finally, de Maison argues she returned over $1 million to the investors, so ill-gotten gains have been repaid. $1 million

is significantly less than the amount of disgorgement the SEC seeks. In any event, de Maison has not carried her burden to demonstrate that any of the ill-gotten gains were repaid to the investors. De Maison submitted many pages reflecting financial transactions which do not demonstrate what she argues they do. The SEC has examined those documents and has discovered no evidence of a repayment for the investments at issue here. In fact, de Maison's largest claimed "return" to an investor of $300,000 is actually a promissory note for that amount, which she defaulted on.

Even when the documents de Maison submitted in opposition to the SEC's motion reflect payment by de Maison to an investor, there is no evidence of linkage to Kensington or Casablanca. For example, de Maison offers a September 20, 2013 transfer for $10,000 to investor Frank Mastronuzzi. The memorandum line on the transfer, however, reads "Refund final pmt of purchase of LSTS stock." "LSTS" is the ticker symbol for another Fraudulent Issuer, Lustros. The disgorgement the SEC seeks from de Maison is not related to investments in Lustros.

The same is true for other documents de Maison submitted. For example, the instructions for a March 11, 2013 wire transfer to Todd Williamson read "For The Blue Painting." Other documents simply include information that transfers were made, but include nothing to suggest that the transfers were made as

reimbursement for the investments at issue here.

De Maison never actually argues that the payments reflected in these documents were related to the transactions for which the SEC seeks disgorgement. Instead, she broadly argues that the investors were "repaid" and therefore her disgorgement amount should be reduced. The documents she includes for that proposition do not support an inference that she "repaid" or refunded investors, let alone for the fraudulent investments at issue in the SEC's motion.

In addition to disgorgement, de Maison should pay prejudgment interest to prevent her from obtaining a benefit of what amounts to an interest free loan procured as a result of illegal activity. The SEC seeks prejudgment interest running from Malone's last-received payment from each issuer -- Kensington and Casablanca -- from which she received improper payments to the present day.[10] This request amounts to $938,201.13.

Prejudgment interest will not be collected, however, on any assets that were frozen from the date those assets were frozen. When a defendant's funds have been frozen in connection with an enforcement action, and are now available to satisfy the disgorgement order, the defendant should not be ordered to pay

[11] For Kensington, May 1, 2011; for Casablanca, November 1, 2011.

prejudgment interest on those funds. See Razmilovic, 738 F.3d at 36-37.[11] When a defendant's funds are so frozen, if the freeze is not violated, the defendant derives no benefit from the ill-gotten gains. $612,551.64 of de Maison's assets were frozen the date the Freeze Order went into effect, October 22, 2014. Those funds were put into a trust account controlled by de Maison's counsel, Davis Wright Tremaine. As of December 23, 2016, the date the Freeze Order was modified, $494,072.99 remained in that trust account. The SEC does not argue that de Maison violated the Freeze Order. The frozen assets will presumably be turned over to the SEC in partial satisfaction of the disgorgement order. The SEC may not collect prejudgment interest on the frozen amount. Given that frozen assets, however, do not completely satisfy the disgorgement order,[12] the SEC may collect prejudgment interest on any outstanding amount running through to the present day.

---

[11] Some courts in this District have cabined Razmilovic's holding to the proposition that a defendant whose assets have been frozen may not be ordered to pay prejudgment interest at the IRS rate. See SEC v. Tavella, 77 F. Supp. 3d 353, 360-361 (S.D.N.Y. Jan 6, 2015). Determining the scope of Razmilovic is unnecessary here as the SEC has asked for an application of the IRS underpayment rate, not a different rate and, as such, even at its most narrow, Razmilovic is on point. In any event, the issue of whether to impose prejudgment interest is soundly within the discretion of the district court.

[12] De Maison has not argued or made any showing that any assets other than the funds in trust account were frozen.

Finally, De Maison's violations of the securities laws support the imposition of a third-tier civil penalty. De Maison had a principal role in a fraudulent scheme that deprived investors of over $4 million. This alone warrants imposition of a third-tier penalty under the relevant statutes, satisfying the requirement that the violations involved fraud and resulted in substantial losses. In de Maison's case, considering the seriousness of the fraud, the significant role she played, and considering the personal benefits that she received from the violations of the securities laws, the maximum fine -- an amount equal to the disgorgement sum of $4,240,049.30 -- is appropriate.

De Maison urges the Court not to impose a civil penalty or, if a penalty is imposed, it should be "minimal." She argues that she has cooperated with the SEC and Department of Justice throughout the SEC's enforcement action. She also reiterates that she is destitute. While consideration of a defendant's financial consideration is a factor to be considered in assessing a civil penalty, it is but one of many a court considers when exercising its discretion. De Maison's conduct was egregious and recurrent. It resulted in substantial losses to investors. The seriousness of her wrongdoing justifies a serious punitive response. A civil penalty equal to the disgorgement sum is appropriate.

b. Malone

The SEC seeks $394,741.24 in disgorgement of the documented wages and payments Malone received for her services to Engelbrecht and the Fraudulent Issuers, prejudgment interest of $55,539.30, and a civil penalty. $394,741.24 is a reasonable approximation of the extent to which Malone profited from violations of the federal securities laws to which she has admitted for purposes of this motion. The SEC's disgorgement request is reasonable.

Like de Maison, Malone may not contest her liability here. A Section 5 claim is a strict liability claim; any argument that Malone did not intend to help carry out fraudulent transactions is not germane. See SEC v. Cavanagh, 98cv1818 (DLC), 2004 WL 1594814, at *19 (S.D.N.Y. July 16, 2004) ("[Defendant] contends that the disgorgement remedy is limited to securities violations involving fraudulent intent. Using their powers of equity, courts can and have granted disgorgement against defendants found liable under strict liability statutes such as Section 5."), aff'd, SEC v. Cavanagh, 445 F.3d 105 (2d Cir. 2006). Like de Maison, Malone signed a Consent in which she "agree[d] that the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty." She also consented that she would be "precluded from arguing that she did

not violate the federal securities laws as alleged in the [Amended] Complaint."

Malone resists disgorgement with several arguments. First, Malone argues that she signed the Consent because the SEC represented that she would not have to pay a penalty.[13] This is not a credible argument; the text of the Consent she signed explicitly and unambiguously denotes that disgorgement and a civil penalty will be imposed.

Malone next argues that the money the SEC seeks does not constitute ill-gotten gains because it reflects a salary she earned for her legitimate work for the Fraudulent Issuers. She alleges that she had no knowledge of the scheme perpetrated by her co-defendants and was simply and dutifully carrying out instructions. As a threshold matter, Malone is precluded from contesting her liability given the Consent she signed. Further, the allegations in the Amended Complaint, taken as true for the purposes of this motion, belie Malone's protestations. Malone, in her capacity as an officer of Kensington, Wikifamilies, and Gepco, helped further illegal activities, including unregistered securities offerings and a reverse merger of a public shell company.

Malone finally contends that the amount sought by the SEC

[13] Malone reiterates this, and other arguments made in her opposition to the motion, in a letter received on July 13, 2018.

is financially crippling. First, the SEC seeks no disgorgement beyond documented payments Malone received. Second, courts in this District have generally agreed that financial hardship does not preclude the imposition of an order of disgorgement. See, e.g., SEC v. Wyly, 56 F. Supp. 3d 394, 406 (S.D.N.Y. 2014); SEC v. Taber, 13mc282 (KBF), 2013 WL 6334375, at *2 (S.D.N.Y. Dec. 4, 2013) (collecting cases).

The imposition of prejudgment interest on Malone is appropriate. The SEC seeks prejudgment interest of $55,429.30, running from Malone's last-received salary payment in connection with work performed for each Fraudulent Issuer -- Wikifamilies, Lustros, and Gepco.[14] Malone contests the imposition of disgorgement in its entirety, but makes no separate argument with respect to prejudgment interest or a specific amount of prejudgment interest.

Finally, Malone's violations of the securities laws support the imposition of a second-tier civil money penalty. Her unlawful actions involved fraud, deceit, manipulation, or deliberate or reckless disregard of the securities laws and regulations. Malone should be subject to a severe penalty, but not the maximum one. She is ordered to pay $25,000 per

[13] For Wikifamilies, June 1, 2011; for Lustros, February 1, 2014; for Gepco, October 1, 2014.

violation, totaling $125,000.[15]

c. Mastromatteo and Traverse

The SEC seeks $58,753 in disgorgement from Mastromatteo and Traverse (together, "Mastromatteo"), $7,461.69 in prejudgment interest, and a civil penalty. Disgorgement is appropriate here, and the SEC's request is a reasonable approximation of the extent to which Mastromatteo profited from violations of the federal securities laws to which he has admitted for purposes of this motion.

$58,753 in disgorgement is a reasonable approximation of Mastromatteo's ill-gotten gains. This amount is documented in bank deposits to accounts in Mastromatteo's own name and in the name of Traverse, an entity he controlled. The payments were made by Cope directly or were proceeds of the sales of Gepco stock. Mastromatteo has not opposed the SEC's motion. He has not attempted to show that the payments were unaffected by his offenses. Mastromatteo and Traverse are jointly and severally liable for the civil money penalty. See First Jersey, 101 F.3d at 1475-76 (affirming district court's order of joint and several disgorgement against First Jersey and its sole owner,

[15] The Amended Complaint alleged that Malone violated Sections 5, 17(a)(1), and 17(a)(3) of the Securities Act; Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, totaling five violations.

noting that "[n]o more than the total amount of First Jersey's unlawful profits, plus interest on those amounts, is to be disgorged").

The SEC seeks $7,461.69 in prejudgment interest, calculated at the IRS underpayment rate from August 1, 2014, immediately following the last month Mastromatteo and Traverse received illegal payments from Cope, through to the present. The imposition of prejudgment interest on Mastromatteo and Traverse is appropriate. While prejudgment interest should not be collected on any assets that were frozen, no party has made a showing that any of Mastromatteo or Traverse's assets were actually frozen pursuant to the Freeze Order. Mastromatteo and Traverse failed to respond to the SEC's instant motion. As such, the SEC may collect prejudgment interest from August 1, 2014.

Finally, the imposition of a second-tier civil money penalty is appropriate. Mastromatteo, individually and through Traverse, knowingly and deliberately disregarded the securities laws and regulations by acquiring millions of shares of Gepco stock in an unregistered offering, and then channeling the proceeds to Cope. Mastromatteo benefitted directly from this scheme through kick-backs from Cope. Mastromatteo is fully culpable for his violations, from which he profited. Given the relatively small amount of pecuniary gains, a penalty equal to

that amount, $58,753, is appropriate, which is well within the statutory range given the number of violations. Mastromatteo and Traverse are jointly and severally liable for the civil money penalty.

CONCLUSION

For the above reasons, it is hereby

ORDERED that de Maison shall disgorge her ill-gotten gains in the amount of $4,240,049.30, plus prejudgment interest.

IT IS FURTHER ORDERED that the SEC shall recalculate the amount of prejudgment interest owed by de Maison in accordance with the instructions in this Opinion and file a letter with its calculations by July 30. Any response, limited to discussions of the calculations alone, is due August 3.

IT IS FURTHER ORDERED that de Maison shall pay a civil penalty of $4,240,049.30.

IT IS FURTHER ORDERED that Malone shall disgorge her ill-gotten gains in the amount of $394,741.24, plus prejudgment interest to be calculated at the IRS underpayment rate, running from the date of the last received payment from Wikifamilies, Lustros, and Gepco, through to the present.

IT IS FURTHER ORDERED that Malone shall pay a civil penalty of $125,000.

IT IS FURTHER ORDERED that Mastromatteo and Traverse shall

disgorge their ill-gotten gains in the amount of $58,753, plus prejudgment interest to be calculated at the IRS underpayment rate, running from August 1, 2014 through to the present. Mastromatteo and Traverse are jointly and severally liable for the disgorgement payment.

IT IS FURTHER ORDERED that Mastromatteo and Traverse shall pay a civil penalty of $58,753. Mastromatteo and Traverse are jointly and severally liable for the civil money penalty.

IT IS FURTHER ORDERED that by August 6, 2018, the SEC shall submit a proposed order implementing the Court's rulings as to all four defendants.

Dated: New York, New York
July 30, 2018

DENISE COTE
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

JASON COPE *et al.*,

Defendants.

14 Civ. 7575 (DLC)

~~[PROPOSED]~~ FINAL JUDGMENT AS TO DEFENDANT ANGELIQUE DE MAISON

Per the Court's Opinion and Order entered on July ~~31~~ 30, 2018 (Docket Entry # 335); the Judgment as to Defendant Angelique de Maison ("Defendant") entered on December 23, 2015 (Docket Entry # 206), which is adopted and incorporated herein but is effective as of the date of its original entry; and Plaintiff Securities and Exchange Commission's letter concerning the recalculation of Defendant's prejudgment interest calculations filed on July 31, 2018 (Docket Entry # 337), Final Judgment is hereby entered against Defendant as follows:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $4,240,049.30, representing profits gained as a result of the conduct alleged in the Amended Complaint, together with prejudgment interest thereon in the amount of $913,818.80, and a civil penalty in the amount of $4,240,049.30. Defendant shall satisfy this obligation by paying $9,393,917.40 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant 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. Defendant 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; Angelique de Maison 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 shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 3 days after being served with a copy of this Final Judgment, Davis Wright Tremaine LLP ("Davis Wright Tremaine") shall transfer the entire balance of any and all moneys received from Defendant, or held for the benefit of Defendant, to the Commission. Davis Wright Tremaine 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. Davis Wright Tremaine also may transfer these funds 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; and specifying that payment is made pursuant to this Final Judgment.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 3 days after being served with a copy of this Final Judgment, Bank of America, N.A. ("Bank of America") shall transfer the entire balance of the following Bank of America account which was frozen pursuant to an Order of this Court to the Commission:

Account Owner	**Acct. Ending in:**
Kensington & Royce Ltd.	*9156

Bank of America 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. Bank of America also may transfer these funds 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; and specifying that payment is made pursuant to this Final Judgment.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the terms, conditions, relief, and remedies set forth in the Judgment as to Defendant Angelique de Maison (Docket Entry # 206) shall remain in full force and effect.

V.

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

VI.

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

Dated: August 8, 2018

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of November, two thousand nineteen.

Securities and Exchange Commission,

Plaintiff - Appellee,

v.

Angelique De Maison,

Defendant - Cross Defendant - Appellant,

Peter Voutsas, Ronald Loshin,

Defendants,

Jason Cope, Izak Zirk De Maison, FKA Izak Zirk Engelbrecht, Louis Mastromatteo, Trish Malone, Kieran T. Kuhn, Gepco, Ltd., Sunatco Ltd., Suprafin Ltd., Worldbridge Partners, Traverse International, Small Cap Resource Corp., Gregory Goldstein, Stephen Wilshinsky, Talman Harris, William Scholander, Justin Esposito, Kona Jones Barbera, Victor Alfaya,

Defendants - Cross Defendants,

Jack Tagliaferro,

Defendant- Cross Claimant - Cross Defendant.

ORDER

Docket No: 18-2564

Appellant, Angelique De Maison, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

STATUTORY PROVISIONS INVOLVED

1. Section 17(a)(2) of the Securities Act of 1933, 15 U.S.C. § 77q(a)(2), provides:

§ 77q. Fraudulent interstate transactions

(a) Use of interstate commerce for purpose of fraud or deceit

It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—

* * *

(2) to obtain money or property by means of any untrue statement of a material fact or any omission 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;

* * *

2. Sections 20(b) and (d) of the Securities Act of 1933, 15 U.S.C. § 77t(b), (d), provide:

§ 77t. Injunctions and prosecution of offenses

* * *

(b) Action for injunction or criminal prosecution in district court

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin

such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this subchapter. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

* * *

(d) Money penalties in civil actions

(1) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 77h-1 of this title, other than by committing a violation subject to a penalty pursuant to section 78u-1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty

(A) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. 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.

(B) Second tier

Notwithstanding subparagraph (A), 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, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), 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, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection

(A) Payment of penalty to Treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u-6 of this title.

(B) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the

matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not exclusive

The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue

For purposes of section 77v of this title, actions under this section shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to a violation of a cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 77h-1 of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such an order, each day of the failure to comply with the order shall be deemed a separate offense.

* * *

3. Section 21(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(d), provides:

§ 78u. Investigations and actions

* * *

(d) Injunction proceedings; authority of court to prohibit persons from serving as officers and directors; money penalties in civil actions

(1) Whenever 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, the rules or regulations thereunder, the rules of a national securities

exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

(2) Authority of court to prohibit persons from serving as officers and directors

In any proceeding under paragraph (1) of this subsection, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 78j(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(3) Money penalties in civil actions

(A) Authority of Commission

Whenever it shall appear to the Commission that any person has violated any provision of this chapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 78u-3 of this title, other than by committing a violation subject to a penalty pursuant to section 78u-1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(B) Amount of penalty

(i) First tier

The amount of the penalty shall be determined by the court in light of the facts and circumstances. 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.

(ii) Second tier

Notwithstanding clause (i), 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, if the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(iii) Third tier

Notwithstanding clauses (i) and (ii), 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, 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.

(C) Procedures for collection

(i) Payment of penalty to treasury

A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u-6 of this title.

(ii) Collection of penalties

If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(iii) Remedy not exclusive

The actions authorized by this paragraph may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(iv) Jurisdiction and venue

For purposes of section 78aa of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this chapter.

(D) Special provisions relating to a violation of a cease-and-desist order

In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 78u-3 of this title, each separate violation of such order shall be

a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(4) Prohibition of attorneys' fees paid from commission disgorgement funds

Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(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.

(6) Authority of a court to prohibit persons from participating in an offering of penny stock

(A) In general

In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(B) Definition

For purposes of this paragraph, the term "person participating in an offering of penny stock" includes any person 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. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

* * *