APPENDIX

TABLE OF CONTENTS

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-3830

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee,

v.

ONGKARUCK SRIPETCH,
Defendant-Appellant,

and

AMANDA FLORES, BREHNEN KNIGHT, ANDREW MCALPINE, ASHMIT PATEL, MICHAEL WEXLER, DOMINIC WILLIAMS, ADTRON INC., also known as Stockpalooza.com, ATG INC., DOIT, LTD, DOJI CAPITAL, INC., KING MUTUAL SOLUTIONS INC., OPTIMUS PRIME FINANCIAL INC., ORCA BRIDGE, REDLINE INTERNATIONAL, UAIM CORPORATION,
Defendants.

Argued and Submitted: May 14, 2025
Filed: September 3, 2025

Appeal from the United States District Court
for the Southern District of California

Before JOHN B. OWENS, MARK J. BENNETT, and HOLLY A. THOMAS, Circuit Judges.

OPINION

H.A. THOMAS, Circuit Judge:

In this civil enforcement action, the Securities and Exchange Commission (Commission or SEC) sought, and the district court granted, a disgorgement award against defendant Ongkaruck Sripetch under 15 U.S.C. § 78u(d)(5) and (d)(7). Sripetch appeals, arguing that the district court abused its discretion by ordering disgorgement because the Commission failed to show that the investors defrauded by his actions suffered pecuniary harm. Our sister circuits have split on this question. The First Circuit, in *SEC v. Navellier & Associates, Inc.*, 108 F.4th 19 (1st Cir. 2024), held that no showing of pecuniary harm is required for an award of disgorgement under § 78u(d)(5) and (d)(7), while the Second Circuit, in *SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023), reached the opposite conclusion. Consistent with *Navellier*, we hold that an award of disgorgement does not require a showing that investors experienced pecuniary harm. We therefore affirm.

I

A

Disgorgement is a profits-based remedy arising under the law of restitution and unjust enrichment and

grounded in the principle that "[a] person is not permitted to profit by his own wrong." *Restatement (Third) of Restitution and Unjust Enrichment* ("Restatement") § 3 (A.L.I. 2011). Under the common law, "[a] person who is unjustly enriched at the expense of another is subject to liability in restitution." *Id.* § 1. When a "conscious wrongdoer" is "enriched by misconduct"—defined as "an actionable interference by the defendant with the claimant's legally protected interests"— "the unjust enrichment . . . is the net profit attributable to the underlying wrong." *Id.* § 51(1), (3), (4). "The object of restitution in such cases is to eliminate profit from wrongdoing while avoiding, so far as possible, the imposition of a penalty." *Id.* § 51(4). "Restitution remedies that pursue this object are often called 'disgorgement' or 'accounting.'" *Id.*; *see id.* cmt. a ("Restitution measured by the defendant's wrongful gain is frequently called 'disgorgement.' Other cases refer to an 'accounting' or an 'accounting for profits.' Whether or not these terms are employed, the remedial issues in all cases of conscious wrongdoing are the same.").

"Initially, the only statutory remedy available to the SEC in an enforcement action was an injunction barring future violations of securities laws." *Kokesh v. SEC*, 581 U.S. 455, 458 (2017). "In the absence of statutory authorization for monetary remedies, the Commission urged courts to order disgorgement as an exercise of their 'inherent equity power to grant relief ancillary to an injunction.'" *Id.* (quoting *SEC v. Tex. Gulf Sulphur Co.*, 312 F. Supp. 77, 91 (S.D.N.Y. 1970)). Courts responded favorably to these requests, and "[b]eginning in the 1970's, courts ordered disgorgement in SEC enforcement pro-

ceedings in order to 'deprive . . . defendants of their profits in order to remove any monetary reward for violating' securities laws and to 'protect the investing public by providing an effective deterrent to future violations.'" *Id.* at 459 (second alteration in original) (quoting *Tex. Gulf*, 312 F. Supp. at 92). In *SEC v. Clark*, 915 F.2d 439 (9th Cir. 1990), for example, we stated that "[t]he SEC's power to obtain injunctive relief has been broadly read to include disgorgement of profits realized from violations of the securities laws." *Id.* at 453 (citing *SEC v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984)).

The legal bases for ordering disgorgement in SEC civil enforcement actions were strengthened in 2002, when Congress granted the SEC express authority to seek "any equitable relief" in civil enforcement actions. *See* Sarbanes- Oxley Act of 2002, Pub. L. No. 107-204, § 305, 116 Stat. 745, 779 (2002). Congress adopted a new provision, codified at 15 U.S.C. § 78u(d)(5), providing that "[i]n 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." Courts thereafter relied on § 78u(d)(5) as a statutory basis for awarding disgorgement in SEC civil enforcement actions, treating disgorgement as a form of "equitable relief" authorized by this new provision. *E.g.*, *SEC v. World Cap. Mkt., Inc.*, 864 F.3d 996, 1003 (9th Cir. 2017) ("In [SEC civil enforcement] actions, federal courts may grant 'any equitable relief that may be appropriate or necessary for the benefit of investors,' 15 U.S.C. § 78u(d)(5), including disgorgement of the gains obtained from securities law violations.").

The Supreme Court, however, continued to leave unanswered the question of whether disgorgement qualifies as "equitable relief" authorized by § 78u(d)(5). In 2017, the Court expressly reserved both that question—i.e., "whether courts possess authority to order disgorgement in SEC enforcement proceedings"—and the subsidiary question of "whether courts have properly applied disgorgement principles in this context." *Kokesh*, 581 U.S. at 461 n.3.

In 2020, the Court answered both questions in *Liu v. SEC*, 591 U.S. 71 (2020). As to the first question reserved in *Kokesh*, *Liu* ratified longstanding lower-court practice by holding that disgorgement qualifies as "equitable relief" under § 78u(d)(5). *Id.* at 75. This conclusion rested on the fact that "[e]quity courts have routinely deprived wrongdoers of their net profits from unlawful activity, even though that remedy may have gone by different names." *Id.* at 79.[1]

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[1] Although *Liu* held that disgorgement awards that adhere to common-law limitations qualify as "equitable relief" under § 78u(d)(5), the Court did not attempt to classify disgorgement as either "equitable" or "legal" in nature. Any such classification would be difficult because "the restitution remedy of disgorgement—stripping defendant's gain or profits—may be deemed either legal or equitable. It looks similar to a money award, but its historical roots include the equitable remedy of accounting for profits." Dan Dobbs & Caprice Roberts, *Law of Remedies: Damages, Equity, Restitution* § 4.1(1), at 376 (3d ed., West Academic Publishing, 2017). As the Restatement explains, "[t]he status of restitution as belonging to law or to equity has been ambiguous from the outset. The answer is that restitution may be either or both." Restatement § 4 cmt. a. "Outside the simplest cases, both claim and remedy in unjust enrichment will often contain elements that might be referred to either tradition." *Id.* cmt. d.

With respect to *Kokesh*'s second reserved question, *Liu* observed that the lower courts had occasionally erred by granting disgorgement awards exceeding the remedy's "common-law limitations." *Id.* at 85. The Court explained:

> Over the years, . . . courts have occasionally awarded disgorgement in three main ways that test the bounds of equity practice: by ordering the proceeds of fraud to be deposited in Treasury funds instead of disbursing them to victims, imposing joint-and-several disgorgement liability, and declining to deduct even legitimate expenses from the receipts of fraud. The SEC's disgorgement remedy in such incarnations is in considerable tension with equity practices.

Id. (footnote omitted). The Court held that disgorgement under § 78u(d)(5) must conform to common-law limitations, by "return[ing] a defendant's gains to wronged investors" when practical, *id.* at 88, refraining from "impos[ing] disgorgement liability on a wrongdoer for benefits that accrue to his affiliates . . . in a manner . . . at odds with the common-law rule requiring individual liability for wrongful profits," *id.* at 90, and "restrict[ing] awards to net profits from wrongdoing after deducting legitimate expenses," *id.* at 84.

A year later, Congress created a second statutory basis for awarding disgorgement in SEC civil enforcement actions. *See* William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116- 283, § 6501, 134 Stat. 3388, 4625–26 (2021). This legislation added 15 U.S.C. § 78u(d)(7), which states: "In any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may

seek, and any Federal court may order, disgorgement."[2] As a result of this legislation, there are now two provisions authorizing disgorgement awards in SEC civil enforcement actions: subsection (d)(5) and subsection (d)(7).

Following these developments, two circuit splits have emerged regarding the proper scope of disgorgement in SEC civil enforcement actions. First, the Second and Fifth Circuits have disagreed about whether the common-law limitations discussed in *Liu* apply only to disgorgement under § 78u(d)(5) or apply to disgorgement under § 78u(d)(7) as well. *Compare SEC v. Ahmed*, 72 F.4th 379, 396 (2d Cir. 2023) ("[W]e conclude that disgorgement under § 78u(d)(7) must comport with traditional equitable limitations as recognized in *Liu*."), *with SEC v. Hallam*, 42 F.4th 316, 339 (5th Cir. 2022) (holding that § 78u(d)(7) "authorize[s] the sorts of disgorgement awards courts were ordering before *Liu*"). Second, as relevant here, the Second and First Circuits have disagreed

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[2] The 2021 legislation also amended § 78u(d)(3). As amended, § 78u(d)(3) expressly authorizes the Commission to seek, and the district court to award, disgorgement under § 78u(d)(7):

> 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 . . . require disgorgement under paragraph (7) of any unjust enrichment by the person who received such unjust enrichment as a result of such violation.

15 U.S.C. § 78u(d)(3)(A)(ii).

about whether disgorgement under § 78u(d)(5) and (d)(7) requires a finding of pecuniary harm. *Compare Govil*, 86 F.4th at 106 ("'Equitable relief' requires that the relief be 'awarded for victims,' and that in turn requires a finding of pecuniary harm." (citation omitted) (quoting *Liu*, 591 U.S. at 75)), *with Navellier*, 108 F.4th at 41 n.14 ("Neither *Liu* nor our case law . . . require investors to suffer pecuniary harm as a precondition to a disgorgement award.").

B

The Commission brought this civil enforcement action against Sripetch and fourteen other defendants in 2020. The Commission alleged that the defendants "worked in concert to engage in numerous fraudulent schemes and other violations of the federal securities laws, involving at least 20 penny stock companies," and that they "obtained at least $6 million in illicit sale proceeds from this illegal conduct, while harming retail investors who purchased shares during the schemes." The Commission charged Sripetch with six counts of securities fraud under the Securities Act of 1933 and the Securities Exchange Act of 1934 and one count of selling unregistered securities in violation of the Securities Act. The Commission sought, among other remedies, an order requiring the defendants "to disgorge all ill-gotten gains" obtained because of the alleged violations.

In 2023, Sripetch consented to the entry of judgment against him. In doing so, Sripetch agreed that "the Court shall order disgorgement of ill-gotten gains [and] prejudgment interest thereon" and that, "solely for the purposes of [the SEC's] motion [for disgorgement], the allegations of the Complaint shall be accepted as and deemed true by the Court."

In its subsequent motion for remedies, the Commission asked the district court to order Sripetch to disgorge $4,115,365.88 in ill-gotten gains in accordance with 15 U.S.C. § 78u(d)(5) and (d)(7), along with prejudgment interest.[3] Sripetch opposed the Commission's request for disgorgement. Relying on the Second Circuit's decision in *Govil*, 86 F.4th at 103–04, Sripetch argued that disgorgement under § 78u(d) "requires a finding that victims suffered pecuniary harm" and that the Commission failed to make this showing. In reply, the Commission urged the district court to reject *Govil*. Alternatively, the Commission argued that Sripetch's victims suffered pecuniary harm.

Relying on § 78u(d)(5) and (d)(7), the district court granted the Commission's motion in part and ordered disgorgement of net profits in the amount of $2,251,923.16, along with prejudgment interest in the amount of $1,051,353.77. *SEC v. Sripetch*, No. 20-cv-01864-H-BGS, 2024 WL 1546917, at *7 (S.D. Cal. Apr. 8, 2024). The court assumed without deciding that a finding of pecuniary harm was required and concluded that the Commission had made the requisite showing. *Id.* at *5. Sripetch timely appealed.

II

"We review orders of disgorgement for an abuse of discretion." *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010).

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[3] Citing Sripetch's 21-month sentence of incarceration in a related criminal case, the Commission declined to seek a monetary civil penalty.

III

Sripetch argues that the district court abused its discretion by ordering disgorgement. In his view, disgorgement under § 78u(d)(5) and (d)(7) requires a showing of pecuniary harm that the Commission failed to make in this case. The Commission responds by arguing that a finding of pecuniary harm is not required and, in the alternative, that it made the required showing. We agree with the Commission's first argument and therefore do not reach the second.[4]

A

The Second Circuit has held that a finding of pecuniary harm is required for an award of disgorgement under § 78u(d)(5), *see Govil*, 86 F.4th at 106, while the First Circuit has held to the contrary, *see Navellier*, 108 F.4th at 41. For the reasons that follow, we reject the reasoning of the Second Circuit and join the First Circuit in holding that a finding of pecuniary harm is not required.

The Second Circuit began its analysis by pointing out that disgorgement requires one or more victims. *See Govil*, 86 F.4th at 98. We agree with this premise. Section 78u(d)(5) authorizes "any equitable relief that may be appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5). *Liu* made clear that disgorgement under § 78u(d)(5) must be "awarded for victims." 591 U.S.

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[4] Although we do not decide whether the Commission made a showing of pecuniary harm, we note that the Commission's contention that the investors suffered pecuniary harm merely because they paid artificially inflated prices for securities is in tension with *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 342–43 (2005).

at 75.[5] And disgorgement under the common law requires a claimant whose "legally protected interests" have been interfered with. Restatement § 51(1). A victim is therefore required.

We disagree, however, with the Second Circuit's conclusion that "victim" is narrowly defined as an individual or entity that has suffered pecuniary harm. *See Govil*, 86 F.4th at 98 ("An investor who suffered no pecuniary harm as a result of the fraud is not a victim."); *id.* at 102 ("We . . . hold that a 'victim' for purposes of § 78u(d)(5) is one who suffers pecuniary harm from the securities fraud."). The Second Circuit's analysis fails to persuade for two reasons.

First, the Second Circuit's approach is contrary to the common law. As *Liu* makes clear, disgorgement under § 78u(d)(5) is governed by "common-law" principles and "traditional equity practice." *Liu*, 591 U.S. at 85, 87; *see also Kousisis v. United States*, 145 S. Ct. 1382, 1392 (2025) ("When Congress uses a term with origins in the common law, we generally presume that the term 'brings the old soil with it.'" (quoting *Sekhar v. United States*, 570 U.S. 729, 733 (2013))). Under these principles, disgorgement does not require a showing of pecuniary harm. At common law, a claimant seeking disgorgement need only show "an actionable interference by the defendant with the claimant's legally protected interests." Restatement

[5] *Liu* derived the requirement that disgorgement under § 78u(d)(5) be awarded for victims from both the statutory language and common-law principles. *See Liu*, 591 U.S. at 87–90.

§ 51(1).[6] But the claimant need not show any loss whatsoever, let alone a pecuniary loss. *See id.* § 1 cmt. a ("While the paradigm case of unjust enrichment is one in which the benefit on one side of the transaction corresponds to an observable loss on the other, the consecrated formula 'at the expense of another' can also mean 'in violation of the other's legally protected rights,' without the need to show that the claimant has suffered a loss."); *id.* reporter's note d (noting that restitution requires no loss "other than a violation of the claimant's rights"); *id.* § 3 cmt. b (noting that disgorgement may be awarded in "cases in which a property owner may have suffered no quantifiable injury from the defendant's unlawful interference"); *id.* reporter's note a ("[T]here can be restitution of wrongful gain in cases where the plaintiff has suffered an interference with protected interests but no measurable loss whatsoever."); *id.* § 51 cmt. d ("So long as benefits wrongfully obtained have an ascertainable market value, that value is the minimum measure of the wrongdoing defendant's unjust enrichment, even if the transaction produces no ascertainable injury to the claimant and no ascertainable benefit to the defendant."); *Maier Brewing Co. v. Fleischmann Distilling Corp.*, 390 F.2d 117, 120–24 (9th Cir. 1968) (affirming a disgorgement order where the plaintiffs "have shown no injury to themselves, no diversion of sales from them to the appellants, no direct competition from which injury may be inferable, and no palming off or fraudulent conduct"); *Pender v. Bank of Am. Corp.*, 788 F.3d 354, 366 (4th Cir.

[6] Sripetch does not argue that his victims did not suffer a violation of their legally protected interests. We therefore do not address that issue.

2015) ("It is blackletter law that a plaintiff seeking an accounting for profits need not suffer a financial loss. Requiring a financial loss for disgorgement claims would effectively ensure that wrongdoers could profit from their unlawful acts as long as the wronged party suffers no financial loss. We reject that notion." (citations omitted)); *Edmonson v. Lincoln Nat'l Life Ins. Co.*, 725 F.3d 406, 415 (3d Cir. 2013) ("[T]he nature of disgorgement claims suggest that a financial loss is not required for standing, as a loss is not an element of a disgorgement claim.").

Second, in defining a victim narrowly as one who has suffered pecuniary harm, the Second Circuit misapprehended the meaning of certain language in *Liu*, certain language in the Restatement, and the relationship between private securities actions and SEC civil enforcement actions.

To begin, the Second Circuit erred by gleaning a pecuniary harm requirement from *Liu*'s observation that disgorgement "restores the status quo." *Liu*, 591 U.S. at 80 (alteration omitted) (quoting *Tull v. United States*, 481 U.S. 412, 424 (1987)). The Second Circuit concluded that this language supports a pecuniary harm requirement because it suggests that a victim's recovery through disgorgement should be limited to her actual losses:

> If we were to understand "victim" as including defrauded investors who suffered no pecuniary harm—and thus to allow those investors to receive the proceeds of disgorgement—we would not be restoring the status quo for those investors. We would be conferring a windfall on those who received the benefit of the bargain.

Govil, 86 F.4th at 103.

But this suggestion ignores the fundamental distinction between compensatory damages, which are designed to compensate the victim for her losses, and restitution, which is designed to deprive the wrongdoer of his ill-gotten gains. As the First Circuit explained in *Navellier*:

> Disgorgement is a "profit-based measure of unjust enrichment" which reflects the foundational principle that "it would be inequitable that [a wrongdoer] should make a profit out of [their] own wrong." *Liu*, 591 U.S. at 79–80 (alteration omitted) (first alteration in original). Disgorgement is thus "tethered to a *wrongdoer's* net unlawful profits." *Id.* at 80 (emphasis added). Consistent with this understanding, we have recognized the distinction between disgorgement, which is limited to "the amount with interest by which the defendant profited from his wrongdoing," and other forms of equitable relief which may "include[] total losses suffered by the victims." *CFTC v. JBW Cap.*, 812 F.3d 98, 111 (1st Cir. 2016).

108 F.4th at 41 (alterations in original); *see also SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328, 341 (2017) ("The equitable remedy of an accounting . . . [i]s not the same as damages. The remedy of damages seeks to compensate the victim for its loss, whereas the remedy of an accounting . . . s[eeks] disgorgement of ill-gotten profits."); Restatement § 3 reporter's note a ("[The Restatement is worded] to avoid any implication that the defendant's wrongful gain must correspond to a loss on the part of the plaintiff. . . . On the contrary, it is clear not only that there can be restitution of wrongful gain exceeding the plaintiff's loss, but that there can be restitution of wrongful gain in cases where the plaintiff has suffered an interference with protected

interests but no measurable loss whatsoever."); *id.* § 51 cmt. a ("[Disgorgement] is measured by the defendant's profits, where the object of restitution is to strip the defendant of a wrongful gain .... Recovery so measured may potentially exceed any loss to the claimant.").[7]

The Second Circuit also placed great weight on *Liu*'s statement that "[t]he equitable nature of the profits remedy generally requires the SEC to *return* a defendant's gains to wronged investors for their benefit." *Liu*, 591 U.S. at 88 (emphasis added). The Second Circuit reasoned that "[f]unds cannot be returned if there was no deprivation in the first place." *Govil*, 86 F.4th at 103. In the cited passage, however, the Court held only that disgorged profits generally must be disbursed to victims rather than deposited into the Treasury. *See Liu*, 591 U.S. at 87–90. The Court neither adopted a pecuniary harm requirement nor discarded the common law's definition of victim.

The Second Circuit further purported to find support for a pecuniary harm requirement in the Restatement itself. The court construed a reporter's note as requiring a claimant to demonstrate "impoverishment," which the court appears to have equated with pecuniary harm. *See*

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[7] The Second Circuit also erred by equating restoration of the status quo with compensatory damages. Different remedies can restore the status quo in different ways. Suppose, for example, a thief takes plaintiff's $30 watch and sells it for $40. The $40 the plaintiff receives in restitution can be understood as restoring the status quo "because the fund of $40 is perceived as a gain produced by plaintiff's property, a gain plaintiff was entitled to make. . . . [A] [p]laintiff entitled to recover the watch is equally entitled to recover whatever is produced by or substituted for the watch," even if this recovery is "far superior to compensatory damages." Dobbs, *supra*, § 4.1(1), at 374.

Govil, 86 F.4th at 103 n.15 (citing Restatement § 1 reporter's note d). The reporter's note in question, however, makes clear that only "a violation of the claimant's rights" is required, not impoverishment; indeed, the note describes impoverishment as "too narrow" a term. *See* Restatement § 1 reporter's note d.[8] The reporter's commentary thus rejects the Second Circuit's view rather than supports it.

Finally, the Second Circuit found support for a pecuniary harm requirement by comparing private securities actions, which require a showing of economic loss, and disgorgement under § 78u(d)(5), which in the Second Circuit's view should include a comparable requirement:

> [T]he investors whom Govil defrauded could not pursue individual fraud claims against him without showing a pecuniary loss. Were we to call those investors "victims" without a similar showing, we would allow the SEC to forward proceeds of disgorgement to such

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[8] The relevant portion of the reporter's note reads as follows:

> There is an understandable temptation to limit the far- reaching notion of unjust enrichment within the manageable confines of a checklist, but the attempt usually leads to trouble. See . . . LaSalle Nat'l Bank v. Perelman, 82 F. Supp. 2d 279, 294–295 (D. Del. 2000) ("The elements of unjust enrichment are: 1) an enrichment, 2) an impoverishment, 3) a relation between the enrichment and the impoverishment, 4) the absence of justification and 5) the absence of a remedy provided by law"). The first four elements of this list might make a plausible definition, though the reference to "impoverishment" is too narrow: there is often no "impoverishment" other than a violation of the claimant's rights. The fifth element is plainly erroneous, since so much of unjust enrichment is legal in origin.

Restatement § 1 reporter's note d.

> investors and circumvent the limitations on private claims under § 10(b) and the common law.

Govil, 86 F.4th at 104–05.[9] But this asymmetry between private securities actions and SEC civil enforcement actions is by design. Congress imposed an economic loss requirement in private securities actions to address "abusive litigation by private parties." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007). But as SEC civil enforcement actions are not subject to abusive litigation by private parties, Congress did not extend the economic loss requirement to such actions. *See Gebhart v. SEC*, 595 F.3d 1034, 1040 n.8 (9th Cir. 2010). Reading an economic loss requirement into § 78u(d)(5) would undermine, rather than effectuate, the statutory scheme.

B

Neither party argues, and there is no reason to suppose, that the disgorgement remedy authorized by subsection (d)(7) is narrower than the one available under subsection (d)(5). Our holding that pecuniary harm is not required under subsection (d)(5) thus also means that it is not required under subsection (d)(7).

IV

In sum, we join the First Circuit in holding that the SEC is not required to show that investors suffered pecuniary harm as a precondition to a disgorgement award

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[9] Economic loss is a basic element of a private securities fraud action under Section 10(b) of the Securities Exchange Act. *See Dura Pharms.*, 544 U.S. at 341–42. Congress imposed the economic loss requirement, codified at 15 U.S.C. § 78u-4(b)(4), as part of the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, § 101, 109 Stat. 737, 747 (1995).

under § 78u(d)(5) or (d)(7). *See Navellier*, 108 F.4th at 41 & n.14. The judgment of the district court is therefore **AFFIRMED**.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

NO. 20-cv-01864-H-BGS

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

ONGKARUCK SRIPETCH; AMANDA FLORES; BREHNEN KNIGHT; ANDREW MCALPINE, ASHMIT PATEL; MICHAEL WEXLER; DOMINIC WILLIAMS; ADTRON INC. A/K/A STOCKPALOOZA.COM; ATG INC.; DOIT, LTD.; DOJI CAPITAL, INC.; KING MUTUAL SOLUTIONS INC.; OPTIMUS PRIME FINANCIAL INC.; ORCA BRIDGE; REDLINE INTERNATIONAL; AND UAIM CORPORATION,
Defendants.

Filed: Apr. 8, 2024

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR REMEDIES AS TO DEFENDANT SRIPETCH

On December 22, 2023, Plaintiff Securities and Exchange Commission ("SEC") filed a motion for remedies against Defendant Ongkaruck Sripetch. (Doc. No. 118.)

On February 29, 2024, Defendant Sripetch filed a response in opposition to the SEC's motion for remedies. (Doc. No. 142.) On March 7, 2024, the SEC filed a reply. (Doc. No. 145.)

The Court held a hearing on Plaintiff SEC's motion on March 25, 2024. Christopher J. Dunnigan and Kristine M. Zaleskas appeared for Plaintiff SEC. Tyler R. Creekmore and Greg T. Nolan appeared for Defendant Sripetch. On April 8, 2024, Defendant Sripetch filed a supplemental declaration in response to the Court's March 25, 2024 scheduling order. (Doc. No. 163, Creekmore Decl.; *see* Doc. No. 159.) For the reasons below, the Court grants in part Plaintiff SEC's motion for remedies.

Background

I. Procedural History

On September 21, 2020, Plaintiff SEC filed a complaint against Defendants Sripetch, Amanda Flores, Brehnen Knight, Andrew McAlpine, Ashmit Patel, Michael Wexler, and Dominic Williams ("the Individual Defendants") and against Defendants Adtron Inc. aka Stockpalooza.com, ATG Inc., DOIT Ltd., Doji Capital, Inc., King Mutual Solutions Inc., Optimus Prime Financial Inc. ("Optimus"), Orca Bridge, Redline International, and UAIM Corporation ("the Entity Defendants"), alleging various claims for: violations of Sections 9(a) and 10(b) of the Securities Exchange Act of 1934 ("the Exchange Act"), 15 U.S.C. §§ 78i(a) and 78j(b); violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("the Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), 77q(a); violations of Rule 10b-5, 17 C.F.R. § 240.10b-5; and aiding and abetting violations of those provisions. (Doc. No. 1, Compl.)

On September 22, 2020, Plaintiff SEC filed an ex parte motion for a temporary restraining order against Defendants Sripetch, Knight, Patel, and Flores. (Doc. No. 6.) On September 22, 2020, the Court granted Plaintiff's motion and entered the requested TRO. (Doc. No. 12.) On October 5, 2020, the Court held an order to show cause hearing. At the hearing, the Court temporarily granted Plaintiff's motion for a preliminary injunction, and the Court converted the September 22, 2020 TRO into a preliminary injunction. (Doc. No. 17.)

On January 19, 2021, the Court granted the United States of America's motion to intervene in the action for the limited purposes of moving for a stay, and the Court granted the United States's motion to stay the action pending the related criminal case *United States v. Sripetch*, 20-cr-160-H. (Doc. No. 54 at 8.) On December 19, 2023, the parties filed a joint status report. (Doc. No. 67.) On May 15, 2023, the parties filed a second joint status report. (Doc. No. 72.) On May 23, 2023, the Court lifted the stay, and the Court issued a scheduling order. (Doc. No. 73.)

On August 9, 2023, the Court entered a bifurcated consent judgment as to Defendant Flores. (Doc. No. 84.) On August 14, 2023, Plaintiff SEC filed an amended complaint. (Doc. No. 87.) On September 11, 2023, the Court entered a bifurcated consent judgment as to Defendant Sripetch. (Doc. No. 92.) The Court's bifurcated judgment as to Defendant Sripetch left the issues of civil penalties, disgorgement, and prejudgment interest to be decided by the Court at a later stage of the proceedings. (*Id.* at 5 § VI.)

On October 5, 2023, Plaintiff SEC voluntarily dismissed entity Defendants DOIT Ltd., Doji Capital, Inc.,

King Mutual Solutions Inc., Optimus Prime Financial Inc., Orca Bridge, Redline International, and UAIM Corporation. (Doc. Nos. 94-100.) On December 5, 2023, Defendant Wexler filed an answer to Plaintiff's amended complaint. (Doc. No. 109.)

On January 8, 2024, the Court entered a final judgment as to Defendant Flores. (Doc. No. 124.) On January 31, 2024, the Court entered a final default judgment against Defendant Williams. (Doc. No. 129.) On February 16, 2024, Defendant McAlpine filed an answer to Plaintiff's amended complaint. (Doc. No. 137.)

By the present motion, Plaintiff SEC moves for disgorgement in the amount of $4,115,365.88 against Defendant Sripetch and prejudgment interest thereon of $1,708,437.26.[1] (Doc. No. 118-1 at 1.) In the motion, Plaintiff SEC further states: "In light of the prison sentence imposed in the parallel criminal matter . . . , the Commission does not request civil penalties."[2] (*Id.*)

II. Relevant Facts

Pursuant to the Court's September 11, 2023 consent judgment entered against Defendant Sripetch, for the

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[1] After Defendant Sripetch initially failed to file an opposition to Plaintiff SEC's motion for remedies, on February 6, 2024, the Court granted Plaintiff SEC's motion for disgorgement. (Doc. No. 132.) On February 14, 2024, after a showing of excusable neglect under Federal Rule of Civil Procedure 60(b) by Defendant Sriptech, the Court vacated its February 6, 2024 order granting Plaintiff SEC's motion for remedies. (Doc. No. 136.)

[2] Defendant Sripetch received a custodial sentence of 21 month in the related criminal proceeding, *United States v. Sripetch*, 20-cr-160-H-1, Docket No. 128 (S.D. Cal., Aug. 1, 2022).

purposes of a motion for disgorgement and/or civil penalties by the SEC, Defendant Sripetch has conceded that the factual allegations in Plaintiff SEC's amended complaint are accepted and deemed as true by the Court. (Doc. No. 92 at 5 § VI.) Those factual allegations are as follows:

A. The Fraudulent Stock Scalping Schemes

From at least August 2013 to at least December 2017, Defendant Sripetch along with the other Defendants in this action worked in concert to engage in numerous fraudulent schemes and other violations of federal securities laws, involving at least 20 penny stock companies. (Doc. No. 87, FAC ¶¶ 1, 31.) These schemes followed the same general pattern:

- First, a subset of the Defendants [including Defendant Sripetch] obtained shares of a microcap issuer through convertible debt agreements, usually claiming to purchase convertible debt through a series of transactions involving intermediaries, and then converting the debt to stock. . . .
- Next, some of the Defendants would promote the issuer. In some instances, they promoted the issuer through Sripetch's own website Stockpalooza.com. However, for most the issuers, a Defendant or Defendants paid an intermediary entity (the "Conduit"), which then wired the funds to third-party promoters (minus a portion purportedly for a commission).
- The promotions did not identify any of the Defendants as the ultimate funder of the promotion, and did not disclose that the actual funder of the promotions was planning to sell stock in the issuers

being promoted. Many of the promotions were silent of the funder's intentions. Others misleadingly indicated that there was a mere possibility the funder would sell.

- Following the promotions, liquidity of the issuer's stock increased and the share price rose, and the Defendants who held stock in that issuer promptly sold.

(*Id.* ¶ 32.)

This practice of promoting a stock without disclosing a present or immediate intent to sell the stock is called "scalping," and it violates the antifraud provisions of the securities law. (*Id.* ¶ 33.) Between August 2013 and February 2019, Defendant Sripetch, directly and indirectly, through entities he controlled, participated in the scalping of shares of stock in 20 different issuers. (*Id.* ¶ 38.) Through these various scalping schemes, Sripetch and certain other defendants obtained illicit sales proceeds of over $6.6 million. (*Id.* ¶ 37.)

B. The Sale of Unregistered Abby Securities

Since at least 2013, Defendant Sripetch along with Defendant Flores controlled Abby Inc. (Doc. No. 87, FAC ¶ 100.) On or around June 5, 2013, Abby issued over 15 million restricted shares to three entities controlled by Sripetch and Flores. (*Id.* ¶ 102.) The entities then, without waiting the required holding period, sold the shares. (*Id.* ¶ 103.) There was no registration statement in effect for any of these sales of Abby stock. (*Id.* ¶ 104.)

From November 2013 through November 2016, Defendants Sripetch and Flores were responsible for the issuance of another 25 million shares of Abby stock, which

were then sent to entities controlled by Sripetch and Flores. (*Id.* ¶ 108.) Like before, the entities almost immediately began selling the shares to the public, and no registration statement was in effect for any of the issuances. (*Id.* ¶ 109.)

C. The Cross-Trading Scheme in VMS Rehab Systems Stock

Between March 2016 and June 2016, Defendant Sripetch and Defendant Knight engaged in a series of matched order and wash trades that were intended to (an in fact, did) lift the price of stock in VMS Rehab Systems. (Doc. No. 87, FAC ¶ 115.) These orders were made within minutes, and at times seconds, of each other. (*Id.*) Sripetch and Knight did this on 16 different days, and on 13 of these days, their trades constituted 50% or more of the total market trading for VMS stock. (*Id.* ¶ 116.) On four of these days, the trading activity by Sripetch and Knight constituted 100% of the daily market trading for VMS stock. (*Id.*) Sripetch and Knight engaged in this coordinated trading activity in advance of a series of stock promotions funded by Sripetch's network. (*Id.*)

D. The Argus Worldwide Stock Pump and Dump Schemes

In 2018 through early 2019, Defendant Sripetch along with Defendants Knight, Wexler, and McAlpine engaged in a series of manipulations of Argus Worldwide stock with the intention of profiting from "pumping and dumping" the stock. (Doc. No. 87, FAC ¶ 117.) The scheme began in April 2018, when Sripetch engaged in a series of matched trades in Argus Worldwide stock, using accounts controlled by his network. (*Id.* ¶ 118.) These trades were designed to create the appearance of active

market interest in Argus Worldwide stock, upward momentum in the stock price, and on many occasions, to set the closing price of the stock. (*Id.*) This pattern of pre-promotion trading activity, often referred to as "building the chart," is a typical step undertaken by fraudulent actors prior to a pump and dump scheme. (*Id.*)

Following those matched trades, an intermediary conduit entity ran a promotional campaign touting Argus Worldwide stock. (*Id.* ¶ 119.) The promotions were designed to generate investor demand in the stock, so that Sripetch and the other defendants involved could dump the stock on the market at a substantial profit. (*Id.*) The promotions did not disclose that Sripetch and his associates intended to sell their Argus Worldwide stock. (*Id.*) In connection with this scheme, Defendant Knight transferred proceeds of sales of Argus Worldwide stock to Sripetch. (*Id.* ¶ 121.)

In late December 2018, Sripetch along with Defendants Knight and Wexler decided to engage in another pump and dump of Argus Worldwide stock. (*Id.* ¶ 126.) As part of this scheme, Sripetch and McAlpine engaged in a series of cross-trades, and Sripetch then arranged for a promotional email campaign. (*Id.* ¶¶ 127, 129.) None of the promotional emails disclosed that Sripetch and his network also owned shares of Argus Worldwide stock and that they planned to sell them. (*Id.* ¶ 129.) Following the commencement of Sripetch's promotional email campaign, on February 4, 2019, Sripetch and McAlpine began dumping their Argus Worldwide stock for $214,519 in combined proceeds. (*Id.* ¶ 130.) The SEC suspended trading in Argus Worldwide the following day. (*Id.* ¶ 131.)

Discussion

I. Disgorgement

i. Legal Standards

Under 15 U.S.C. § 78u(d)(5), "federal courts may grant 'any equitable relief that may be appropriate or necessary for the benefit of investors,' including disgorgement of the gains obtained from securities law violations." *S.E.C. v. World Cap. Mkt., Inc.*, 864 F.3d 996, 1003 (9th Cir. 2017) (quoting 15 U.S.C. § 78u(d)(5)); *see Liu v. S.E.C.*, 140 S. Ct. 1936, 1940 (2020) (holding that district courts have power to issue a disgorgement award under 15 U.S.C. § 78u(d)(5)). A district court may only order disgorgement pursuant to § 78u(d)(5) in an amount that "does not exceed a wrongdoer's net profits and is awarded for victims." *Liu*, 140 S. Ct. at 1940; *see S.E.C. v. Berkeley Healthcare Dynamics, LLC*, No. 20-16754, 2022 WL 42807, at *1 (9th Cir. Jan. 5, 2022); *S.E.C. v. Yang*, 824 F. App'x 445, 447 (9th Cir. 2020).

In addition, under 15 U.S.C. §§ 78u(d)(3) and (d)(7), a district court "may order . . . disgorgement" "of any unjust enrichment by the person who received such unjust enrichment as a result" of violating securities laws. "'Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable.'" *S.E.C. v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010).

"Disgorgement need be 'only a reasonable approximation of profits causally connected to the violation.'" *Id.* (quoting *S.E.C. v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998)). The SEC "bears the ultimate

burden of persuasion that its disgorgement figure reasonably approximates the amount of unjust enrichment." *Id.* (quoting *S.E.C. 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, however, . . . the burden shifts to the defendants to 'demonstrate that the disgorgement figure was not a reasonable approximation.'" *Id.*

ii. Whether the SEC Must Identify Harmed Investors and Explain How the Requested Disgorged Fund Would Benefit Those Investors

As an initial matter, Defendant Sripetch argues that the SEC's motion should be denied because the SEC has failed to provide the Court with any evidence identifying harmed investors or explaining how the requested disgorged funds would benefit those investors as required by the Supreme Court's decision in *Liu v. S.E.C.*, 140 S. Ct. 1936 (2020). (Doc. No. 142-1 at 1, 2-10.) In response, Plaintiff SEC argues that the Court should reject Defendant's argument because binding Ninth Circuit law holds that disgorgement is not to compensate victims and nothing in *Liu* conflicts with that holding. (Doc. No. 145 at 2.)

In *Liu*, the Supreme Court held that "a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under § 78u(d)(5)." 140 S. Ct. at 1940. In reaching this holding, the Supreme Court explained that the relevant statute, 15 U.S.C. § 78u(d)(5), provides for "equitable relief." *Id.* at 1942. The Supreme Court then noted that equity jurisdiction reveals "two principles:"

> First, equity practice long authorized courts to strip wrongdoers of their ill-gotten gains . . . . Second, to avoid transforming an equitable remedy into a punitive sanction, courts restricted the remedy to an individual wrongdoer's net profits to be awarded for victims.

Id.

Defendant Sripetch argues that, under *Liu*'s holding, the SEC is required to prove that investors were harmed and that the disgorged funds will go to those harmed investors. (Doc. No. 142-1 at 9.) The Court notes that the Supreme Court's holding in *Liu* specifically applies to disgorgement awards made pursuant to 15 U.S.C. § 78u(d)(5). *See Liu*, 140 S. Ct. at 1940. Here, Plaintiff SEC seeks a disgorgement award under sections 78u(d)(3) and (d)(7) in addition to section 78u(d)(5). (*See* Doc. No. 118-1 at 8.)

As Defendant Sriptech acknowledges, there is a split of out-of-circuit authority regarding whether *Liu*'s holding applies to disgorgement awards under 15 U.S.C. §§ 78u(d)(3) and (d)(7). (*See* Doc. No. 142-1 at 4-5.) In *S.E.C. v. Hallam*, the Fifth Circuit held that the Supreme Court's holding in *Liu* does not apply to disgorgement awards under 15 U.S.C. §§ 78u(d)(3) and (d)(7). *See* 42 F.4th 316, 338 (5th Cir. 2022) ("As amended, Section 78u(d) authorizes disgorgement in a legal—not equitable—sense. In doing so, it ratifies the pre-*Liu* disgorgement framework used by every circuit court of appeals."), 341 ("Sections 78u(d)(3) and (d)(7) authorize legal 'disgorgement' apart from the equitable 'disgorgement' permitted by *Liu*."). In *S.E.C. v. Govil*, the Second Circuit expressly disagreed with the Fifth Circuit's holding in *Hallam* and instead held that "'disgorgement under

§ 78u(d)(7) must comport with traditional equitable limitations as recognized in *Liu*.'" *See S.E.C. v. Govil*, 86 F.4th 89, 100–04 (2d Cir. 2023) (quoting *S.E.C. v. Ahmed*, 72 F.4th 379, 396 (2d Cir. 2023)) ("[D]isgorgement under both § 78u(d)(5) and § 78u(d)(7) are constrained by *Liu*.").[3]

Nevertheless, the Court need not resolve this split of out-of-circuit authority because, in light of the allegations in Plaintiff SEC's first amended complaint, which the Court must accept as true pursuant to the parties' consent judgment, Plaintiff SEC has demonstrated that investors have been harmed by Defendant Sripetch's fraudulent schemes. (*See* Doc. No. 145 at 5-6; Doc. No. 87, FAC ¶¶ 1, 32-33, 36-38, 42, 59, 68, 98, 117-30.) *See S.E.C. v. iFresh, Inc.*, No. 22CV3200ARRSJB, 2024 WL 416709, at *3 (E.D.N.Y. Feb. 5, 2024) ("The SEC's allegation that iFresh's stock prices were artificially inflated during the relevant time period, taken as true, also establishes the requisite pecuniary harm to those who purchased iFresh stock during that time period." (citing *Govil*, 86 F.4th at

[3] Plaintiff SEC contends that "[b]inding Ninth Circuit precedent holds that, '[u]nlike … damages,' disgorgement is ordered to 'prevent unjust enrichment and to make securities law violations unprofitable, not to compensate victims.'" (Doc. No. 145 at 2 (quoting *Platforms Wireless*, 617 F.3d at 1097).) The Court does not find the SEC's reliance on this specific holding from *Platforms Wireless* persuasive. *Platforms Wireless* is a pre-*Liu* and pre-Section 78u(d)(7) decision regarding a district court's ability to order disgorgement under its "'broad equity powers.'" *See Platforms Wireless*, 617 F.3d at 1096–97. As such, the Supreme Court's holding in *Liu* that a disgorgement award under § 78u(d)(5) must not exceed a wrongdoer's net profits and be awarded for victims overrules that specific holding from *Platforms Wireless*. *See Liu*, 140 S. Ct. at 1940.

104)). In addition, at the hearing, Plaintiff SEC represented to the Court that it will make good faith efforts to ensure that any disgorgement award will go to those harmed investors. (*See* Doc. No. 145 at 1.) Indeed, the SEC represented that it has already conducted a preliminary assessment for a distribution to defrauded investors. (*See id.*) As such, the Court rejects Defendant Sripetch's argument that the Court should deny the SEC's motion for disgorgement in light of *Lui*'s holding.

iii. The Proper Disgorgement Amount

In its motion, Plaintiff SEC requests that the Court order Defendant Sripetch to pay $4,115,365.88 in disgorgement. (Doc. No. 118-1 at 7.) In response, Defendant Sripetch contests that the amount and asserts that he should instead be ordered to pay no more $1,942,418.48 in disgorgement. (Doc. No. 142-1 at 10-11.)

"Disgorgement need be 'only a reasonable approximation of profits causally connected to the violation.'" *Platforms Wireless*, 617 F.3d at 1096. The SEC "bears the ultimate burden of persuasion that its disgorgement figure reasonably approximates the amount of unjust enrichment." *Id.* "Once the SEC establishes a reasonable approximation of defendants' actual profits, however, . . . the burden shifts to the defendants to 'demonstrate that the disgorgement figure was not a reasonable approximation.'" *Id.*

The Ninth Circuit has explained that this burden shifting approach is appropriate because "information is not 'obtainable at negligible cost.'" *Id.* "The defendants are more likely than the SEC to have access to evidence establishing what they paid for the securities, if anything, to whom the proceeds from the sales were distributed,

and for what purposes the proceeds were used." *Id.* Further, "'the risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty.'" *Id.*

On September 11, 2023, the Court entered a consent judgment against Defendant Sripetch. (Doc. No. 92.) Under the terms of that consent judgment, for the purposes of a motion for disgorgement by the SEC, Defendant Sripetch conceded that the factual allegations in Plaintiff SEC's amended complaint are accepted and deemed as true by the Court. (*Id.* at 5 § VI.) In addition, the parties agreed that the Court may determine the issues raised in a motion for disgorgement based on declarations without regard to the standards for summary judgment contained in Federal Rule of Civil Procedure 56(c). (*Id.*)

In support of its request for disgorgement, Plaintiff SEC has provided the Court with a declaration from one of its fraud analysts stating that after analyzing relevant bank accounts, brokerage accounts, and transfer agents, he determined that: (1) Sripetch received $2,042,284.12 in net profits from selling shares of microcap stock into the various promotional campaigns detailed in this order and in Plaintiff SEC's amended complaint (Doc. No. 118-2, Tong Decl. ¶ 4(a); *see* Doc. No. 87, FAC ¶¶ 31-99); (2) Sripetch received $25,830.16 in proceeds from the unregistered sales of Abby stock (Doc. No. 118-2, Tong Decl. ¶ 4(b); *see* Doc. No. 87, FAC ¶¶ 100-12); and (3) Sriptech received $2,047,251.60 in pass-through profits and kickbacks from other individuals involved in the various fraudulent schemes. (Doc. No. 118-2, Tong Decl. ¶ 4(c); *see* Doc. No. 87, FAC ¶¶ 74, 78, 82, 84, 88, 92, 96, 97.) Accepting the allegations in Plaintiff SEC's amended complaint as true along with the information contained in the SEC's declaration, Plaintiff SEC has demonstrated that

its disgorgement figure of $4,115,365.88 reasonably approximates the amount of unjust enrichment here. As such, the burden now shifts to Defendant Sripetch to demonstrate that the SEC's disgorgement figure is not a reasonable approximation. *See Platforms Wireless*, 617 F.3d at 1096.

In an effort to meet his burden, Defendant Sripetch has provided the Court with a declaration stating that according to his tax returns, between 2013 and 2019, he reported a gross profit of $3,275,200.08 and also that during that time he incurred a total of $1,023,276.92 in expenses. (Doc. No. 142-2, Sripetch Decl. ¶¶ 4-5.) In response, the SEC contends that Defendant Sripetch's declaration is insufficient. (Doc. No. 145 at 6-8.) Plaintiff SEC notes that Defendant Sripetch has not provided the Court with his actual tax returns and has not provided the Court with any documentation to substantiate his expenses calculation. (*Id.*) The Court rejects these challenges to the Sripetch declaration and finds the information in the declaration to be sufficiently supported. As such, the Court accepts Defendant Sripetch's calculations of his gross profit as $3,275,200.08 and his business expenses as $1,023,276.92.

But the Court rejects Defendant Sripetch's attempt to further reduce the disgorgement amount by $309,504.68 by factoring in the cost basis for the relevant stocks. (*See* Doc. No. 142-2, Sripetch Decl. ¶ 6; Doc. No. 142-1 at 11-12.) Plaintiff SEC correctly notes that Defendant Sripetch's gross profit calculation should already reflect the deduction of any cost basis for the stocks. (Doc. No. 145 at 7 (citing *S.E.C. v. Retail Pro, Inc.*, 673 F. Supp. 2d 1108, 1119 (S.D. Cal. 2009) (explaining that "gross profit" is "revenues minus cost of goods sold")). Further,

in his supplemental declaration, Plaintiff's counsel concedes that it is more likely than not that Defendant Sriptech's cost basis was included in his 2013 to 2019 tax returns; and, "[t]herefore, the cost basis number should be added to Mr. Sripetch's disgorgement calculation." (Doc. No. 163, Creekmore Decl. ¶¶ 3-5.)

In sum, in light of the evidence presented by Defendant Sripetch, the Court concludes that the proper disgorgement amount is $2,251,923.16. As such, the Court imposes $2,251,923.16 in disgorgement against Defendant Sripetch. *See also, e.g.*, *S.E.C. v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1112 (9th Cir. 2006) (affirming a disgorgement order entered after the district court entered a consent judgment against the defendants precluding the defendants from arguing that they did not violate the federal securities laws in the manner set out in the complaint).

II. Prejudgment Interest

Plaintiff SEC also moves for prejudgment interest. (Doc. No. 118-1 at 10.) "Awards of disgorgement typically 'include prejudgment interest to ensure that the wrongdoer does not profit from the illegal activity.'" *S.E.C. v. Harrison*, No. 221CV01610SPGDFM, 2023 WL 4681542, at *2 (C.D. Cal. Jan. 18, 2023) (quoting *S.E.C. v. Cross Fin. Servs., Inc.*, 908 F. Supp. 718, 734 (C.D. Cal. 1995)); *see S.E.C. v. Crowd Mach., Inc.*, No. 4:22-CV-0076-HSG, 2023 WL 8438553, at *3 (N.D. Cal. Dec. 5, 2023).

Defendant Sripetch's bifurcated consent judgment provides that prejudgment interest will be "calculated from August 15, 2013, 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)."

(Doc. No. 92 at 5 § VI.) As such, the Court will impose prejudgment interest against Defendant Sripetch based on the IRS underpayment rate. *See, e.g.*, *S.E.C. v. Ahmed*, 72 F.4th 379, 403 (2d Cir. 2023) (affirming award of prejudgment interest at the IRS underpayment rate); *S.E.C. v. Bartlett*, No. SACV2300765CJCJDEX, 2023 WL 8605276, at *7 (C.D. Cal. Sept. 12, 2023) (awarding prejudgment interest at the IRS underpayment rate).

Conclusion

For the reasons above, the Court grants in part Plaintiff SEC's motion for remedies against Defendant Sripetch. The Court imposes $2,251,923.16 in disgorgement along with prejudgment interest on that amount based on the IRS underpayment rate against Defendant Sripetch. The parties must both: (1) file a calculation of the appropriate amount of prejudgment interest on the Court's $2,251,923.16 disgorgement order; and (2) submit a proposed final judgment as to Defendant Sripetch to the Court **within (7) seven days from the date this order is filed**.

IT IS SO ORDERED.

DATED: April 8, 2024

/s/ *Marilyn L. Huff*
MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

NO. 20-cv-01864-H-AGS

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

ONGKARUCK SRIPETCH; AMANDA FLORES; BREHNEN KNIGHT; ANDREW MCALPINE, ASHMIT PATEL; MICHAEL WEXLER; DOMINIC WILLIAMS; ADTRON INC. A/K/A STOCKPALOOZA.COM; ATG INC.; DOIT, LTD.; DOJI CAPITAL, INC.; KING MUTUAL SOLUTIONS INC.; OPTIMUS PRIME FINANCIAL INC.; ORCA BRIDGE; REDLINE INTERNATIONAL; AND UAIM CORPORATION,
Defendants.

Filed: Apr. 17, 2024

FINAL JUDGMENT AS TO DEFENDANT ONGKARUCK SRIPETCH

Pursuant to the September 11, 2023 consent judgment between Plaintiff Securities and Exchange Commission ("SEC") and Defendant Ongkaruck Sripetch, (Doc. No. 92), and the Court's April 8, 2024 order granting in part Plaintiff SEC's motion for remedies against

Defendant Sripetch, (Doc. No. 165), the Court enters the following final judgment against Defendant Ongkaruck Sripetch:

The Securities and Exchange Commission having filed a Complaint and Defendant Ongkaruck Sripetch ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant Sripetch and the subject matter of this action; the Court having entered an Order on April 8, 2024 finding that the Commission is entitled to a final judgment against Defendant Sripetch; and the Court having considered the Commission's motion for entry of final judgment and all the pleadings and evidence submitted in support thereof:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Sripetch is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (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.

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

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sripetch is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (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.

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

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sripetch is permanently restrained and enjoined from violating Section 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, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sripetch is permanently restrained and enjoined from violating Section 9(a)(1) of the Exchange Act, 15 U.S.C. § 78i(a)(1), by, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, for the purpose of creating a false or misleading appearance of active trading in any security other than a government security, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the

same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

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

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sripetch is permanently barred from participating in an offering of penny stock, including 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. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act, 17 C.F.R. 240.3a51-1.

VI.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sripetch is liable for disgorgement of $2,251,923.16, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $1,051,353.77, for a total of $3,303,276.93. Defendant Sripetch will satisfy this obligation by paying $3,303,276.93 to the Securities and Ex-

change Commission within 30 days after entry of this Final Judgment. Funds transferred to the Commission pursuant to Section VII herein will offset Defendant's $3,303,276.93 obligation.

Defendant Sripetch 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 Sripetch may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which must be delivered or mailed to:

Enterprise Services Center

Accounts Receivable Branch

6500 South MacArthur Boulevard

Oklahoma City, OK 73169

and must be accompanied by a letter identifying the case title, civil action number, and name of this Court; Ongkaruck Sripetch as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant Sripetch must simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant Sripetch relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds will be returned to Defendant.

The Commission will hold the funds (collectively, the "Fund") until further order of this Court. The SEC may propose a plan to distribute the Fund subject to the Court's approval, and the Court will retain jurisdiction over the administration of any distribution of the Fund.

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

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 3 days after being served with a copy of this Final Judgment, E*Trade by Morgan Stanley ("E*Trade") must transfer the entire balance of the following brokerage accounts which were frozen pursuant to an Order of this Court to the Commission:

Account Name	**Account Number Ending in:**
Ongkaruck Sripetch	****0535
Ongkaruck Sripetch	****6070
Ongkaruck Sripetch SEP	****6399
Adtron, Inc., (Ongkaruck Sripetch, president)	****6567

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 3 days after being served with a

copy of this Final Judgment, TD Ameritrade, N.A. must transfer the entire balance of the following brokerage account which was frozen pursuant to an Order of this Court to the Commission:

Account Name	**Account Number Ending in:**
Adtron, Inc. (Ongkaruck Sripetch, president)	****7567

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 3 days after being served with a copy of this Final Judgment, Bank of the West n/k/a BMO Financial Group, must transfer the entire balance of the following bank account which was frozen pursuant to an Order of this Court to the Commission:

Account Name	**Account Number Ending in:**
Adtron, Inc. (Ongkaruck Sripetch, president)	054-42-xxxx

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

Account Name	**Account Number Ending in:**
Ongkaruck Sripetch	****3791

E*Trade, Citibank, N.A., TD Ameritrade, N.A. and Bank of the West 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. E*Trade Securities, LLC, Citibank, N.A., TD Ameritrade, N.A. and Bank of the West 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 must be delivered or mailed to:

Enterprise Services Center

Accounts Receivable Branch

6500 South MacArthur Boulevard

Oklahoma City, OK 73169

and must 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.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED 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 operative complaint are true and admitted by Defendant Sripetch, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant Sripetch under this Final 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 Defendant Sripetch 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).

IX.

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

X.

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.

IT IS SO ORDERED.

DATED: April 17, 2024

/s/ *Marilyn L. Huff*
MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT