SUPPLEMENTAL APPENDIX

The following record documents are reproduced in this Supplemental Appendix and referenced as "Supp. App., *infra*, SA-__":

SA-1. Government's Motion for Forfeiture Money Judgment, *United States v. Georgiou*, No. 2:09-cr-00088 (E.D. Pa.), ECF No. 220, n.1 — stating that the $26 million forfeiture represents the "amount of loss" to victims.

SA-2. Government's Response to First *Audita Querela* Petition, ECF No. 457, at p. 18 — conceding that the restrained Canadian funds are not necessarily proceeds of the offenses and that there is "no evidence of record" that they are directly forfeitable.

SA-3. Excerpt from Petitioner's Opening Brief on Direct Appeal, No. 10-4774 (3d Cir.), filed November 5, 2013, at p. 88 — preserving the challenge that forfeiture measures actual gain, not victim loss.

SA-4. Trial Transcript, February 1, 2010, at 214-17 (ECF 176-1 at 72-75) — the sidebar exchange in which the prosecutor characterized the liquidation as a result of the defendant's "fraud in this case" and the court adopted that characterization.

SA-5. Order Disqualifying Acting United States Attorney Lappen as Government Counsel at the Evidentiary Hearing and Compelling His Testimony as a Necessary Fact Witness, ECF No. 413 (August 10, 2017).

SA-6. Memorandum Opinion Denying Rule 60(b) Motion, ECF No. 717 (September 28, 2026) — excerpts: the jurisdictional holding (pp. 7-15); the alternative disposition of the judicial bias claim (pp. 23-25); the alternative disposition of the disqualified prosecutor claim (pp. 16-22).

SA-7. Order Denying Certificate of Appealability, ECF No. 722 (October 14, 2026).

SA-8. Plaintiff SEC's Response to Motion to Stay, Reconsideration, Appointment of Counsel, Discovery, and Time for Supplemental Briefing, *SEC v. Georgiou*, Civil No. 2:09-cv-00616-MMB (E.D. Pa.), Civ. ECF No. 66, at pp. 15-18 (April

11, 2023) — the Commission's explanation that its $21,079,074 figure is a "conservative" approximation of the $26 million criminal forfeiture, and its statement that the amount "would not matter."

SA-9. Plaintiff SEC's Memorandum of Law in Support of Motion for Summary Judgment, Civ. ECF No. 16-1, at pp. 7-8, 17-19, and 33 (January 15, 2016) — the $21,079,074 request, cited to no exhibit, and the Commission's own description of the margin balance as growing from stock-price decline and trading losses.

APPENDIX 1

Per Curiam Opinion

United States Court of Appeals for the Third Circuit — May 14, 2026

SEC v. Georgiou, No. 23-1751 (3d Cir.) (unpublished, non-precedential)

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1751

SECURITIES AND EXCHANGE COMMISSION

v.

GEORGE GEORGIOU,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:09-cv-00616)
District Judge: Honorable Michael M. Baylson

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 8, 2026
Before: BIBAS, CHUNG, and BOVE, *Circuit Judges*

(Opinion filed: May 14, 2026)

OPINION*

PER CURIAM

George Georgiou appeals pro se from the District Court's summary judgment in favor of the Securities and Exchange Commission (SEC) on its claims that Georgiou

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

committed securities fraud. We will affirm.

From 2004 through 2008, Georgiou and his co-conspirators engaged in a stock fraud scheme resulting in more than $55 million in actual losses. In February 2009, the SEC brought this civil enforcement action against Georgiou alleging that his fraudulent trading practices and market manipulation violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b); and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

Concurrent with the SEC's case, the Department of Justice (DOJ) filed criminal charges against Georgiou based on the same fraudulent scheme to manipulate the market for the same securities. The civil action was stayed pending completion of the criminal trial. In February 2010, a jury found Georgiou guilty on all charges, including two of the same violations of the Exchange Act at issue here—securities fraud under Section 10(b) and Rule 10b-5. Georgiou was sentenced to 300 months' imprisonment and ordered to pay over $55 million in restitution.[1] The District Court also granted the Government's motion for a $26 million forfeiture judgment. This Court affirmed the conviction and sentence on direct appeal, *see United States v. Georgiou*, 777 F.3d 125 (3d Cir. 2015), and the Supreme Court denied certiorari, *see Georgiou v. United States*, 577 U.S. 954 (2015). Georgiou has filed a "staggering number" of unsuccessful post-judgment motions. Dist. Ct. Mem. 2, ECF No. 59.

[1] At sentencing, the District Judge commented that "[Georgiou] obstructed justice by perjuring himself in this court. The evidence in this case was overwhelming. [Georgiou] sat there and listened to it, and yet he took the witness stand and gave evidence that really left the court stunned." Mem. 2 n.1, ECF No. 59.

In January 2023, the District Court transferred the civil case back to the active docket and granted summary judgment for the SEC, holding that Georgiou's civil liability for federal securities fraud was established as a matter of collateral estoppel by his criminal convictions for the same conduct. The District Court also awarded disgorgement and prejudgment interest, but it deemed those obligations satisfied by the restitution order in his criminal case. Georgiou appealed.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's grant of summary judgment, *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 265 (3d Cir. 2014), and application of issue preclusion, *Jean Alexander Cosms., Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 248 (3d Cir. 2006). We review the District Court's disgorgement award for abuse of discretion. *CFTC v. Am. Metals Exch. Corp.*, 991 F.2d 71, 76 (3d Cir. 1993).

We see no error in the District Court's determination that Georgiou's criminal convictions worked an estoppel in favor of the SEC. A criminal conviction collaterally estops a defendant from relitigating in a subsequent civil action issues that were resolved in the criminal proceeding if "(1) the issue sought to be precluded is the same as that involved in the prior action; (2) that issue was actually litigated; (3) it was determined by a final and valid judgment; and (4) the determination was essential to the prior judgment." *Anderson v. Comm'r of Internal Revenue*, 698 F.3d 160, 167 (3d Cir. 2012) (quotation marks and alterations omitted).

Those elements are satisfied here. First, both cases involved the exact same conduct and series of events. In the criminal case, the jury found Georgiou guilty of

violating Section 10(b) of the Exchange Act and Rule 10b-5. In this case, the SEC claimed that he was liable for violating these same securities laws, and those provisions require proof of the same elements regardless of whether they are invoked in a criminal or civil case. The SEC also claimed that Georgiou was liable for violating Section 17(a) of the Securities Act, which requires proof of the same elements as Section 10(b), except that claims under Section 17(a) may be premised on offers of securities as well as completed sales. *See* 15 U.S.C. § 77q(a). Because the buying and selling of securities was what was at issue in the criminal trial, the jury's guilty verdict on Section 10(b) established the elements of Section 17(a). *Cf. Sec. & Exch. Comm'n v. Stein*, 906 F.3d 823, 830 (9th Cir. 2018) (concluding that appellant's conviction for securities fraud under 18 U.S.C. § 1348 established his liability under Section 17(a) because both claims "require proof of the same elements except that Section 17(a) prohibits fraud in the offer or sale of any securities, which was what was at stake in the criminal trial" (quotation marks omitted)). And the remaining three elements of collateral estoppel were also satisfied: Georgiou's liability under the securities laws was actually litigated and determined by a final judgment, and the determination was essential to the criminal judgment.

On appeal, Georgiou argues that the District Court erred in giving his criminal convictions preclusive effect because he is still pursuing collateral challenges to the convictions. But "a judgment's preclusive effect is generally immediate, notwithstanding any appeal." *Coleman v. Tollefson*, 575 U.S. 532, 539 (2015). Relatedly, Georgiou argues that his criminal convictions cannot work an estoppel because "the record [in his

criminal case] is rife with unresolved factual disputes." Br. 34, ECF No. 63. He asserts, for example, that his convictions are "infected by unresolved judicial bias," Br. 26; that an SEC analyst presented false trading charts at trial; that a government informant committed perjury; and that he has obtained new evidence that undermines his convictions. But Georgiou's challenges to his criminal proceedings do not create factual disputes here; when collateral estoppel applies, no further litigation on the issue is allowed. *See United States v. Rigas*, 605 F.3d 194, 217 (3d Cir. 2010) (en banc).

Georgiou also contends that the District Court committed a number of procedural errors in the proceedings below. He asserts that the District Court returned the case to the active docket without notifying him; that he was not given an opportunity to contest the SEC's claims before summary judgment; that the District Court held an ex parte teleconference; and that the District Court delayed the proceedings. Georgiou does not, however, explain how these alleged errors affected the District Court's determination that his criminal convictions collaterally estopped him from relitigating those issues in this civil action.[2] Therefore, any error was harmless. *See Delgado-Sobalvarro v. Att'y Gen.*,

[2] With respect to Georgiou's contention that the ex parte telephone conference was "a dispositive hearing which rendered the judgment," Br. 20, we have reviewed the transcript, ECF No. 63, and agree with the District Court that "[n]o rulings were made of any kind nor did anything else occur that was prejudicial to [him], Order 1, ECF No. 68. *See United States v. Skulsky,* 786 F.2d 558, 561 (3d Cir. 1986) (affirming the denial of evidentiary hearing on issue of ex parte communications because the record clearly indicated that the ex parte communication concerned "the procedural question of [the appropriate] forum" and, thus, could not have been prejudicial to the defendants); *In re Sch. Asbestos Litig.*, 977 F.2d 764, 789 (3d Cir. 1992) ("[Ex parte communications] are tolerated of necessity, however, where related to non-merits issues, for administrative matters, and in emergency circumstances.").

625 F.3d 782, 787 (3d Cir. 2010) ("To establish a violation of due process, the petitioner[] must show that substantial prejudice resulted from the alleged procedural errors.").

Finally, the District Court acted within its discretion in finding that Georgiou was liable for disgorgement of $21,079,074, representing the net profits gained through his violations of the securities laws. The Exchange Act authorizes district courts to grant "equitable relief that may be appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5); *see also id.* § 78u(d)(7) (authorizing a district court to award disgorgement in actions brought by the SEC). "[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)." *Liu v. Sec. & Exch. Comm'n*, 591 U.S. 71, 75 (2020). Although Georgiou contends that the SEC did not meet its burden of demonstrating that this figure represents his ill-gotten gains, we have already rejected this argument and concluded that $26 million "constitutes[] or is derived from proceeds traceable to the offenses of which [Georgiou] was convicted." *Georgiou*, 777 F.3d 146–47 (internal quotation omitted); *see also United States v. Georgiou*, 800 F. App'x 136, 139 (3d Cir. 2020) (not precedential) (rejecting Georgiou's challenge to the forfeiture order based on proceeds he never obtained because "there is ample evidence in the record that Georgiou obtained millions in proceeds from the scheme").

We have considered Georgiou's remaining arguments on appeal and conclude that they are meritless. Accordingly, we will affirm.

APPENDIX 2

Order Denying Rehearing En Banc

United States Court of Appeals for the Third Circuit — June 9, 2026

SEC v. Georgiou, No. 23-1751 (3d Cir.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1751

SECURITIES AND EXCHANGE COMMISSION

v.

GEORGE GEORGIOU,
Appellant

(District Court No. 2:09-cv-00616)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, MONTGOMERY-REEVES, CHUNG, BOVE, and MASCOTT, *Circuit Judges*

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ *Cindy K. Chung*
Circuit Judge

Dated: June 9, 2026
PDB/cc: George Georgiou
All Counsel of Record

APPENDIX 3

Orders Granting Summary Judgment

United States District Court for the Eastern District of Pennsylvania — March 2, 2023

SEC v. Georgiou, Civil No. 2:09-cv-00616-MMB, ECF Nos. 59, 60 (Baylson, J.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION **v.** **GEORGE GEORGIOU**	**CIVIL ACTION** **NO. 09-616**

MEMORANDUM RE: COLLATERAL ESTOPPEL

Baylson, J. **March 2, 2023**

On February 12, 2009, the SEC filed a civil enforcement action against Defendant in parallel with an indictment from the U.S. Attorney's Office for the Eastern District. ECF 1. Both allege the same misconduct by Defendant: a series of fraudulent schemes to manipulate securities. The civil action was stayed pending Defendant's criminal trial on April 28, 2009. ECF 5.

The Criminal Case

On February 10, 2010, a jury convicted Defendant of one count of conspiracy in violation of 18 U.S.C. § 371, four counts of securities fraud in violation of 15 U.S.C. §§ 78j(b), 78ff, and 17 C.F.R. § 240, 10b-5, four counts of wire fraud in violation of 18 U.S.C. § 1343, and aiding

and abetting in violation of 18 U.S.C. § 2.[1] Crim. Dkt. 135.[2] On December 14, 2010, Defendant was sentenced to 300 months' imprisonment and ordered to pay over $55 million in restitution. Crim Dkt. 231.

Defendant proceeded to file a staggering number of post-trial motions.[3] The Court will limit its procedural history to the most pertinent ones.

On December 19, 2010, Defendant appealed the conviction to Third Circuit. Crim Dkt. 233. The Third Circuit upheld the conviction on January 20, 2015. 777 F.3d 125. On November 2, 2015, The Supreme Court denied Defendant's writ of certiorari. Georgiou v. United States, 577 U.S. 954 (2015).

On January 26, 2017, Defendant filed a § 2255 petition, raising various claims of trial and sentencing error, prosecutorial misconduct, and ineffectiveness of counsel. Crim. Dkt. 307. The court denied all of Defendant's claims on June 19, 2018. See Georgiou, 2018 WL 9618008

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1 Judge Kelly observed at sentencing that the evidence against Defendant was overwhelming:

> "[Georgiou] obstructed justice by perjuring himself in this court. The evidence in this case was overwhelming. The defendant sat there and listened to it, and yet he took the witness stand and gave evidence that really left the Court stunned. It was almost pathetic. I could not understand why he thought what he was doing was a good idea. It obviously failed because this case went almost three weeks, and that jury I think was out about less than two hours, maybe an hour and a half, and lunch was served to them while they were there. That's how powerful the testimony and the evidence were in this case, and they found him guilty of all nine counts."
>
> Crim. Dkt. at 83-84.

2 The criminal docket is 09-88.

3 See, e.g., United States v. Georgiou, 742 F. Supp. 2d 613 (E.D. Pa. 2010) (denying motion for new trial); United States v. Georgiou, 2011 WL 1081156 (E.D. Pa. Mar. 18, 2011), aff'd, 777 F.3d 125 (3d Cir. 2015) (denying Third Motion for New Trial); United States v. Georgiou, 2011 WL 6153629 (E.D. Pa. Dec. 12, 2011) (denying motion for reconsideration and motion filed under seal); United States v. Georgiou, 2021 WL 1122630 (E.D. Pa. Mar. 23, 2021) (denying Motion for Compassionate Release). The 13-year criminal docket has over 680 entries.

(E.D. Pa 2018). On September 27, 2018, Defendant appealed the denial of his § 2255 motion. Crim. Dkt. 615. On May 4, 2020, the Third Circuit affirmed the decision. Crim. Dkt. 633. Defendant then filed a petition for certiorari in the Supreme Court which, on January 11, 2021, was denied. See Georgiou v. United States, 2021 WL 78188 (U.S. Jan. 11, 2021).

On August 17, 2017, Defendant petitioned the Court for his first writ of audita querela under 28 U.S.C. § 1651, challenging a forfeiture order from his November 2010 sentencing. Crim Dkt. 417. The Third Circuit and Supreme Court both rejected this challenge. See United States v. Georgiou, 800 F. App'x 136 (3d Cir. 2020); 141 S. Ct. 560.

On February 2021, Defendant filed a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). Crim. Dkt. 635. Judge Jones denied the motion with leave to refile. Crim. Dkt. 640, 641.

At present, there are 3 motions for reconsideration on the criminal docket before Judge Quiñones Alejandro,[4] seeking (1) compassionate relief (for the second time); (2) relief from unlawful forfeiture; and (3) bail and appointment of counsel for imminent Rule 60(b) litigation alleging defects in the integrity of the § 2255 proceedings. Crim. Dkt. 678, 679, 680. See also Crim. Dkt. 681 (motion to clarify the above motions). Each original motion had been denied on July 23, 2022. Crim. Dkt. 675. An omnibus response to the three motions for reconsideration was filed by the Government on August 2, 2022. Crim. Dkt. 683. Defendant filed a reply on August 22, 2022. Crim. Dkt. 687.

[4] Judge Quiñones Alejandro was assigned the criminal case on July 27, 2022.

The Civil Case

The civil docket was closed on March 14, 2014, ECF 6, but was reopened on October 23, 2015. ECF 12. The Complaint in this civil case tracks the allegations of the indictment very closely. The SEC filed a motion for summary judgment on January 15, 2016. ECF 16. After various responses by Defendant and replies by the SEC, the Court stayed the action and placed it in the civil suspense file on January 11, 2018.[5] ECF 48. The Court transferred the case back to the active docket on January 30, 2023. ECF 57.

Upon review of the pending Motion for Summary Judgment, the Court concludes that the Defendant's criminal conviction for the same conduct alleged in the Civil Complaint, requires the Court, under the doctrine of collateral estoppel, to grant the Motion for Summary Judgment with prejudice. See Anderson v. Commission of Internal Revenue, 698 F.3d 160, 164-165 (3d Cir. 2012).

[5] At the time, the § 2255 proceedings before Judge Kelly had not been completed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION **v.** **GEORGE GEORGIOU**	**CIVIL ACTION** **NO. 09-616**

ORDER RE: COLLATERAL ESTOPPEL

AND NOW, this 2nd day of March, 2023, for the reasons stated in the foregoing Memorandum, it is hereby **ORDERED** that judgment is entered in favor of the Plaintiff, Securities and Exchange Commission ("SEC") and against the Defendant George Georgiou.

The SEC shall submit a form of order with any proposed further remedies or relief, within ten (10) days. Defendant may reply with ten (10) days.

BY THE COURT:

/s/ MICHAEL M. BAYLSON

MICHAEL M. BAYLSON, U.S.D.J.

APPENDIX 4

Final Judgment

United States District Court for the Eastern District of Pennsylvania — April 12, 2023

SEC v. Georgiou, Civil No. 2:09-cv-00616-MMB, ECF No. 69

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GEORGE GEORGIOU,

Defendant.

Civil Action No. 2:09-cv-00616-MMB

FINAL JUDGMENT

Upon consideration of Plaintiff Securities and Exchange Commission's Notice of Proposed Form of Final Judgment, it is hereby ORDERED that the Court's March 2, 2023 Order re: Collateral Estoppel (Dkt. No .60), ordering that judgment is entered in favor of the Plaintiff Securities and Exchange Commission and against the Defendant George Georgiou, is incorporated as if stated herein.

I.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant 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 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 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].

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $21,079,074, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $2,069,251, but those obligations are deemed satisfied by the Court's order of restitution in the amount of $55,832,398 in the criminal case, *United States v. George Georgiou*, Crim. No. 2:09-cr-88 (E.D. Pa.).

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.

IT IS SO ORDERED

Entered this 12th day of April, 2023

/s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.

SUPPLEMENTAL APPENDIX SA-1

Government's Motion for Forfeiture Money Judgment

ECF No. 220, Footnote 1 — Forfeiture Based on "Amount of Loss"

United States v. Georgiou, No. 2:09-cr-00088 (E.D. Pa. 2010)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 09-88
	:	
GEORGE GEORGIOU	:	

GOVERNMENT'S MOTION FOR FORFEITURE MONEY JUDGMENT

The United States of America, by and through its attorneys, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and Louis D. Lappen and Derek A. Cohen, Assistant United States Attorneys, respectfully requests entry of a forfeiture money judgment, and in support of this motion, the United States represents as follows:

1. On February 12, 2009, defendant was charged in an Indictment with conspiracy to commit securities fraud and wire fraud, in violation of 18 U.S.C. § 371 (Count One); securities fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5 (Counts Two through Five); and wire fraud, in violation of 18 U.S.C. § 1343 (Counts Six through Nine). The Notice of Forfeiture in the Indictment alleged that certain property was forfeitable as a result of said offenses.

2. On February 12, 2010, defendant was found guilty by a jury of Counts One through Nine.

3. As a result of his conviction, defendant is required, pursuant to 18 U.S.C. § 981(a)(1)(C)) and 28 U.S.C. § 2461(c), to criminally forfeit his interest in any property, real or personal, which constitutes, or is derived from proceeds traceable to any offenses constituting "specified unlawful activity," that is, securities fraud and wire fraud, or a conspiracy to commit such offenses.

4. Based on evidence presented at trial and summarized at sentencing, the government avers that the sum of $26,000,000 is subject to forfeiture as a result of defendant's conviction of the illegal acts alleged in Counts One through Nine.[1] This sum is the amount of property which constitutes, or is derived from proceeds traceable to any offenses constituting "specified unlawful activity," that is, securities fraud and wire fraud, or a conspiracy to commit such offenses, and the government has established the requisite nexus between such sum and such offenses. See United States v. Vampire Nation, 451 F.3rd 189, 201-202 (3d Cir. 2006) (an in personam forfeiture money judgment may be entered against the defendant for the full amount of the criminal proceeds); United States v. Voigt, 89 F.3rd 1050, 1084, 1088 (3d Cir. 1996) (government entitled to personal money judgment against defendant equal to amount of funds forfeitable).

5. The government, therefore, requests that a forfeiture judgment in the amount of $26,000,000 be entered against defendant.

6. Because the government seeks only a money judgment and does not seek forfeiture of any specific asset at this time, advertisement of the judgment and third-party proceedings are not required. Fed.R.Crim.P. 32.2(c)(1) (no ancillary proceedings to address third-party claims required where forfeiture consists of money judgment).

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[1] This is the amount set forth in the Notice of Forfeiture as that was the amount of loss readily provable by the government at the time of the indictment. For this reason, the government will not seek the full amount of the loss caused by the defendant as he will be obligated to pay that sum through mandatory restitution.

For the reasons stated above, the government requests that this Court enter the attached Forfeiture Money Judgment.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

/s/Louis D. Lappen
LOUIS D. LAPPEN
First Assistant United States Attorney

/s/Derek A. Cohen
DEREK A. COHEN
Assistant United States Attorney

SUPPLEMENTAL APPENDIX SA-2

Government's Response to First Audita Querela Petition

ECF No. 457, at p. 18 — Concession That Restrained Funds Are Not Necessarily Proceeds

United States v. Georgiou, No. 2:09-cr-00088 (E.D. Pa. Sept. 18, 2017)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	**Criminal No. 09-88-01**
GEORGE GEORGIOU	:	

RESPONSE OF UNITED STATES OF AMERICA IN OPPOSITION TO MOTION TO VACATE FORFEITURE ORDER AND ORDERS FOR SUBSTITUTE ASSETS UNDER 28 U.S.C. § 1651, THE ALL WRITS ACT, OR FOR A WRIT OF AUDITA QUERELA

The United States of America, by its attorneys, Louis D. Lappen, Acting United States Attorney for the Eastern District of Pennsylvania, and Joseph F. Minni, Assistant United States Attorney, responds to the defendant's pro se Motion to Vacate Forfeiture Order and Orders for Substitute Assets under 28 U.S.C. § 1651, The All Writs Act, or for a Writ of *Audita Querela* (ECF No. 384), in the above-captioned case as follows:

I. INTRODUCTION

As a result of his conviction in this case, this Court entered against the defendant, George Georgiou, and in favor of the United States, a forfeiture judgment in the amount of $26 million ("forfeiture judgment"). This judgment, which represents the amount of property that "constitutes, or is derived from

C. Georgiou Otherwise is Barred from Seeking Relief from the Forfeiture Judgment.

Georgiou's motion also must fail as this Court lacks jurisdiction to alter a final forfeiture judgment.

The government initially notes that, by construing 21 U.S.C. § 853(a) to limit criminal forfeiture to the tainted proceeds "obtained, directly or indirectly" by the individual defendant, the Supreme Court in *Honeycutt* announced a substantive rule that has retroactive effect. *See Welch v. United States*, 136 S. Ct. 1257, 1264 (2016) ("[n]ew substantive rules generally apply retroactively" on collateral review), quoting *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004); *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016) (Eighth Amendment decision barring mandatory life without parole for juvenile offenders is substantive and therefore retroactive on collateral review); *Bousley v. United States*, 523 U.S. 614, 620 (1998) (new decision construing substantive reach of criminal statute applies on collateral review). *See also In re Hoffner*, --- F.3d ---, 2017 WL 3908880, *2 (3d Cir. Sept. 7, 2017) (following *Welch*). The Court in *Honeycutt* clarified that Section 853(a) always restricted criminal forfeiture to the property obtained, directly or indirectly, by the individual defendant. *See Bousley*, 523 U.S. at 625 (decision "merely explained what [the statute] had meant ever since the statute was enacted.") (Stevens, J., concurring in part and dissenting in part).

However, whether a new rule has retroactive effect does not automatically confer a remedy. Although a defendant may raise *Honeycutt* on direct appeal, *see Griffith v. Kentucky*, 479 U.S. 314, 328 (1987), or even on appeal from an order forfeiting substitute assets, a defendant may not challenge a criminal forfeiture order once the judgment becomes final. A district court lacks authority to alter the terms of a criminal forfeiture order after the direct appeal has become final. *See United States v. Pelullo*, 178 F.3d 196, 202 (3d Cir. 1999) (preliminary order is final as to the defendant and divests him of any interest he had in the property, including property forfeited as a substitute asset); *United States v. Lester*, 2008 WL 732897, *2 (D. Kan. 2008) (once order of forfeiture became final as to defendant at sentencing, his only remedy was direct appeal; he could no longer make objections to the forfeiture in the district court); *United States v. Hicks*, 2005 WL 2656594, *2 (W.D. Wash. 2005) (because forfeiture is part of sentencing, it may only be challenged on direct appeal; once the time for appeal has expired, the forfeiture is final and cannot be revised by the district court). Therefore, while the decision in *Honeycutt* may be applied retroactively, even on collateral review, there is no basis to vacate a forfeiture judgment once it becomes final.[3]

[3] Generally, an order is deemed "final" when "a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied." *Griffith v. Kentucky*, 479 U.S. at 321, n.6. *See also Clay v. United States*, 537 U.S. 522, 524-25 (2003)

"Satisfy everyone?" Georgiou never objected. This Court also stated that it would "sign the forfeiture order," and it later noted that "the Court has signed the order of forfeiture as presented by the government." In agreeing to the forfeiture order, *i.e.*, $26 million forfeiture judgment, Georgiou waived any claim that it was improper.

On appeal, Georgiou also challenged the forfeiture judgment on the grounds that the forfeiture amount was based on the victims' losses and this Court failed to enter the judgment in accordance with Rule 32.2. The Court of Appeals rejected these arguments. It held that Georgiou waived these claims because, even though he had several opportunities to do so, he did not object to the forfeiture judgment. *See United States v. Georgiou*, 777 F.3d at 147. The Court of Appeals' decision became final when the Supreme Court denied Georgiou's petition for writ of certiorari.

Georgiou's challenge to this Court's forfeiture judgment by way of the present motion which seeks to absolve him of responsibility for the judgment is untimely. Georgiou's sentence, including the forfeiture order, became final in November 2015 when the Supreme Court denied his petition for writ of certiorari. Now, almost two years later, and almost seven years after this Court entered the forfeiture judgment, Georgiou seeks to vacate the judgment on the basis of a new rule announced by the Supreme Court in *Honeycuttt*. Having failed to present this issue on direct appeal, Georgiou waived his challenge to the forfeiture judgment.

Georgiou now cannot raise this claim under The All Writs Act, a Writ of *Audita Querela*, or on any other basis. This Court, therefore, now lacks jurisdiction to alter its final forfeiture judgment.

D. This Court Properly Entered the Substitute Assets Order.

Georgiou also seeks to vacate the substitute asset order alleging that the government failed to comply with Federal Rule of Criminal Procedure 32.2 and 21 U.S.C. § 853(p) because it "never actually undertaken diligence to locate offense related proceeds." Motion, ¶ 17. Georgiou contends that the government failed to produce any affidavit or other evidence of diligence to explain its efforts to locate directly forfeitable property. *Id.* We disagree.

This case presents a classic example of the government seeking to forfeit unrelated property which the government alleged belongs to Georgiou to collect on an outstanding forfeiture judgment. The government does not contend that the funds in the RBC Account are necessarily proceeds of the fraud offenses for which Georgiou was convicted. There is no evidence of record to suggest that the funds in this account were directly forfeitable assets. Rather, the government sought forfeiture of these funds as substitute property to satisfy, in part, the existing $26 million forfeiture judgment imposed against Georgiou.

In its motion seeking the substitute asset order, the government specifically alleged that:

SUPPLEMENTAL APPENDIX SA-3

Excerpt from Petitioner's Opening Brief on Direct Appeal

No. 10-4774 (3d Cir.), Filed November 5, 2013, at p. 88

Forfeiture Challenge Preserved — Actual Gain, Not Victim Loss

Case Nos. 10-4774 (L), 11-4587 (cons.) & 12-2077 (cons.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

GEORGE GEORGIOU,

Defendant-Appellant.

On Appeal From Judgment and Sentence of the United States District Court for the Eastern District of Pennsylvania Crim. No. 09-0088

BRIEF OF DEFENDANT-APPELLANT GEORGE GEORGIOU

BACHNER & ASSOCIATES, P.C.
Attorneys for Defendant-Appellant George Georgiou
39 Broadway, Suite 1610
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96; *see also Chau Fan Xu*, 706 F.3d at 992-94; *U.S. v. Azeem*, 946 F.2d 13, 17-18 (2d Cir.1991).

C. The District Court Erred When it Based Restitution on Its Guidelines "Loss" Calculation

The court's restitution order also was clearly erroneous because it used the Guidelines loss calculation for purposes of establishing the restitution amount (27-JA 5521a). *See Vilar*, 729 F.3d at 96; *Chau Fan Xu*, 706 F.3d at 994 ("district court [improperly] referred to its Guidelines calculations in making factual findings regarding the amount of actual loss suffered by the Bank of China").

D. The District Court Plainly Erred When it Imposed the Forfeiture Order

The district court's failure to comply with Rule 32.2 and its improper methodology for calculating the forfeiture amount prejudiced Georgiou's substantial rights. *See U.S.* v. *Marquez*, 685 F.3d 501, 509-10 (5th Cir.2012). In *Marquez*, the Fifth Circuit held that the court committed plain error when it "failed to comply with the procedural requirements set forth in [Rule] 32.2," which require it to make a *presentencing* forfeiture determination and enter a preliminary order of forfeiture whenever the government seeks a personal money judgment, and noted that the procedures are "mandatory" "not empty formalities." *Id.* at 509-10; *see also U.S. v. Schwartz*, 503 F.App'x 443, 449 (6th Cir.2012)(unpublished).

No preliminary order of forfeiture was ever entered in this case; rather, the government waited nine months to file a proposed forfeiture order, days before sentencing. The errors were more prejudicial than in *Marquez*, because here no basis for the forfeiture amount was even contained in the PSR.[44] *Cf. id.* at 505. Indeed, the government, tried to avoid any challenge, by mentioning the forfeiture as the court was leaving the bench to consider the sentencing arguments, calling it a "housekeeping matter" (27-JA 5515a). Moreover, the court's $26,000,000 forfeiture determination was substantively erroneous (29-JA 5726a-5727a). Criminal forfeiture focuses on disgorgement, and a defendant's actual gain, not the victim's loss. *See U.S. v. Contorinis*, 692 F.3d 136, 146-47 (2d Cir.2012). Here, the court failed to establish any basis for the forfeiture amount, and the government failed to demonstrate the amount of criminal proceeds. *See U.S. v. Leahy*, 438 F.3d 328, 331-33 (3d Cir.2006).

[44] The government made *no* objections to the PSR (27-JA 5308a).

SUPPLEMENTAL APPENDIX SA-4

Trial Transcript — February 1, 2010, at 214-17

ECF 176-1 at 72-75 — The Sidebar Exchange

United States v. Georgiou, No. 2:09-cr-00088 (E.D. Pa.) (Kelly, J.)

mischaracterizing the testimony, number one. And number two, again, this is well beyond the scope of direct and beyond anything that is relevant in this case. The fraud has already occurred, it is over, and this is what has happened afterwards.

THE COURT: All right.

MR. LAPPEN: It has not relevance.

THE COURT: Yes.

MS. RECKER: Your Honor, it is relevant because Mr. Georgiou recruits Mr. DeRosa to try to fix the problem, and in the course of discussing fixing the problem the assets get spirited away, and Caledonia remains now just a shell.

THE COURT: It was pretty well -- I won't say. All right. I want -- I have let you go into it to this extent. Now finish it up.

BY MS. RECKER:

Q So in January, when you went to Toronto to meet with Mr. DeRosa and Mr. Georgiou the terms that were proposed included a promise to attempt to try to convince Mr. Jennings -- Mr. Jennings would convince Mr. McNeilly to leave, take those assets that had been spirited away because they had been cherry picked, and to put them back in the company, correct?

A I do recall that conversation, yes.

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Q But that --

A I heard it, yes.

Q That did not happen, did it?

A I'm sorry, what did not happen?

Q McNeilly did not put the assets that he was --

A Back.

Q -- stripped out back into Caledonia, did he?

A He did not. Once Caledonia went into liquidation, the liquidator brought those assets back into Caledonia, and in my opinion, that was reporting it to the Securities Commission in the Bahamas, and also having a liquidator take control of Caledonia and bring those assets back in was the most decent thing that could be done. And it is very unfortunate, you know. You know, a lot of the clients at Caledonia were people I have known for many years, and none of this would have happened without George Georgiou's involvement with Caledonia.

Q I have nothing further, Your Honor. Thank you.

MR. LAPPEN: May we see Your Honor at sidebar for a moment?

(Sidebar discussion begins.

MR. LAPPEN: Your Honor, while there was a defense motion in the case that struck from the indictment any reference on Caledonia caused by the

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defendant's fraud, and Your Honor granted that motion and said that --

THE COURT: In part.

MR. LAPPEN: In part.

THE COURT: In part. I allowed the fact of the losses to come in --

MR. LAPPEN: Right, the losses come in, but not --

THE COURT: -- but not the fact that they would --

MR. LAPPEN: -- that they would liquidate.

THE COURT: -- collapse completely.

MR. LAPPEN: Right. Correct. And now, obviously counsel has opened the door to this, so I would just request permission to be able to address the subject in redirect.

THE COURT: What more is there to be said about it? He pretty much said that all his people lost money.

MR. LAPPEN: Well, he can still -- he has not really -- he has only said it in response to her question. He has not fleshed out how it happened, and she has left sort of a misimpression about how somehow Caledonia misused the Omnibus Account and it was there fault.

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THE COURT: All right.

MR. LAPPEN: And what he testified to was that this was -- these were losses that were caused by George Georgiou, and the liquidation was a result of exactly what George Georgiou had done in his fraud in this case.

MS. RECKER: May I respond?

THE COURT: What?

MS. RECKER: The witness testified on direct that they used other clients assets to fund the margin facility.

THE COURT: No, I never heard that on direct.

MS. RECKER: He said it on direct, Your Honor --

THE COURT: Did you?

MS. RECKER: -- and I can find the records to it. He did. He said it. I have a it written.

THE COURT: I don't know what that has to do with anything. I am sure you wrote it down.

MS. RECKER: Well, the fact is the only way the margin facility was able to advance from the very beginning was by using other clients' assets, and this is something that he has admitted. It is something that --

THE COURT: So what does that have to do with

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your client's committing this massive fraud?

MS. RECKER: Because the only way that the trades could continue was by further extension of margin, so the margin starts out at three million dollars, and is further extended by using other clients' assets. That is the only way that the magnitude can incrementally increase.

THE COURT: So what? Your guy never made any payments at all, did he?

MS. RECKER: Well, there were sales in the account of securities which generally --

THE COURT: Oh, come on.

MR. LAPPEN: I have a very brief redirect --

THE COURT: All right.

MR. LAPPEN: -- and all I want is permission to go into the area, the door --

THE COURT: Yes, okay.

MR. LAPPEN: -- to which she has opened. That is it. That is my only request.

MR. PASANO: Judge, may I ask when they -- and this is at the end of the day. All of us have from time to time in our arguments to the Court said things in front of the jury. From time to time the prosecutors have repeated the word "fraud," and while I know that is advocate to their position, would the

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Court consider at the end of the day that statements of counsel of what they belief, is or is not fraud or something, not to take their job away because it is their job to make that determination.

MR. LAPPEN: I do not object. If he wants to -- he can have all of the cautionary instructions that he wants.

(Sidebar discussion concluded.)

THE COURT: Very briefly, let's go.

MR. LAPPEN: Yes, very brief.

REDIRECT EXAMINATION

BY MR. LAPPEN:

Q Sir, you had testified on cross-examination that you were taking some direction and had some dealings in the beginning of the operation of this account from Ron Wyles, is that correct?

A Correct.

Q And then through the operation of the account who did you primarily deal with and who did you primarily take direction from?

A From George.

Q The Omnibus Account that you have testified about with the setup where other clients' assets were used to cover margin exposure, who required you to do that, if anyone?

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A Jitney required us to do that because of changes in regulations in Canada.

Q And what do you -- what changes in regulations were there that caused this new requirement?

A Before the end of 2005, the way in which the accounts were structured was never to count at Jitney, and each account really stood on its own. And there was a change in the regulations in Canada which required that if you wanted to operate an account, as the account that we were operating, that we would need to provide information on each of our clients. copies of passports, information that you would normally require in setting up a bank account anywhere. And Caledonia felt that this is something that the clients did not want. And Jitney had turned it around and said okay, we will set the account up for you, but it has to be an Omnibus Account so all of the assets of all of the clients had to be in one account. And they allowed us to operate that on a margin account basis.

Q Now, if --

A Can I just go a little bit further?

Q Go ahead, you can finish.

A Because I think it is important. You know, just about all of our clients were good, honest, decent individuals, operated accounts. We probably had five

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SUPPLEMENTAL APPENDIX SA-5

Order Disqualifying Acting U.S. Attorney Lappen and Compelling His Testimony

ECF No. 413 — August 10, 2017

United States v. Georgiou, No. 2:09-cr-00088 (E.D. Pa.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
vs.	:	
	:	
GEORGE GEORGIOU	:	NO. 09-88

ORDER

AND NOW, this 10th day of August, 2017, upon consideration of George Georgiou's ("Georgiou") pro se "Motion to Compel Testimony of Acting US Attorney, Louis D. Lappen ("Lappen"), as a Necessary Witness, and Motion to Disqualify Acting US Attorney Louis D. Lappen From Representing the Government at Petitioner's Evidentiary Hearing" (Doc. No. 400), and the Government's Response in Opposition, it is hereby **ORDERED** that:

1. Georgiou's Motion to Compel Testimony of Lappen as a Necessary Witness is **GRANTED**.[1]

[1] The evidentiary hearing is limited to, *inter alia*, the following issue: "Waltzer's communications with the Government attorneys during the investigation of Georgiou and other defendants." (Doc. No. 397) Georgiou claims that Assistant United States Attorneys ("AUSAs") had improper contacts with Kevin Waltzer which made the AUSAs necessary fact witnesses. (Pet.'s Mot. to Compel Testimony and Mot. to Disqualify at 1-5.) The Government stated that "[it] . . . agreed to a hearing on this matter because of the factual allegations that Georgiou raised about supposed government misconduct in dealing with Waltzer. [It] challenges those allegations of misconduct. [It] believes that there should be a complete factual record that will allow the Court to address whether Georgiou's claim, even if waived, nonetheless lacks merit." (Govt.'s Response at 2) (footnote omitted). Georgiou's claim specifically includes allegations that Lappen engaged in one-on-one contacts with Kevin Waltzer prior to Georgiou's arrest without law enforcement. (Pet.'s Mot. to Compel Testimony and Mot. to Disqualify at 1-5.) In light of Georgiou's claim specifically involving Lappen's one-on-one contacts with Waltzer, we find that Lappen solely can testify about such alleged contacts and, therefore, is a necessary witness. See O'Keefe v. Ace Rest. Supply, LLC, No. 11-1330, 2017 WL 1134124, at *3 (E.D. Pa. Mar. 27, 2017) ("A witness will be deemed 'necessary' when he has crucial information in his possession which must be divulged and when that information is relevant and not protected by any privilege. . . . Where the information possessed by a witness can be obtained elsewhere or is cumulative, the court will not consider that witness to be 'necessary.'") (internal citations omitted). In addition, Lappen will need to testify about his representations regarding the Government's knowledge of Waltzer's contacts with the Government before June 2007, including the United States Attorney's Office's knowledge of the existence of records.

2. Georgiou's Motion to Disqualify Lappen From Representing the Government at Petitioner's Evidentiary Hearing is **GRANTED**.[2]

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE

[2] Pursuant to Rule 3.7 of the Pennsylvania Rules of Professional Conduct, "[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) [t]he testimony relates to an uncontested issue; (2) [t]he testimony relates to the nature and value of legal services rendered in the case; or (3) [d]isqualification of the lawyer would work substantial hardship on the client." Pa. R. Prof'l C. 3.7; E.D. Pa. Loc. R. Civ. P. 83.6. "The disqualification of Government counsel is a 'drastic measure and a court should hesitate to impose it except where necessary.'" United States v. Zamichieli, No. 12-182, 2015 WL 3668147, at *10 (E.D. Pa. June 15, 2015) (quoting United States v. Vega, 317 F. Supp. 2d 599, 602 (D.Vi. 2004) (citing United States v. Bolden, 353 F.3d 870, 878 (10th Cir. 2003); United States v. Zagami, 374 F. App'x 295, 297-98 (3d Cir. 2010))). "Thus, courts have disqualified AUSAs 'only in limited circumstances,' such as where an appointed prosecutor represents multiple parties in a case and where a prosecutor plans to testify as a witness at the defendant's trial." Id. (quoting Vega, 317 F. Supp. 2d at 602 (collecting cases)). "In these rare circumstances in which 'a defendant raises a credible allegation of a prosecutor's conflict of interest or other relationship that would create the appearance of an improper motivation in the prosecution, the court must undertake a careful balancing of proper considerations of judicial administration against the United States' right to prosecute the matter through counsel of its choice.'" Id. (quoting Vega, 317 F. Supp. 2d at 602-03 (citing United States v. Whittaker, 268 F.3d 185, 194-95 (3d Cir. 2001))).

The Government argues that disqualifying Lappen from the evidentiary hearing will work a substantial hardship. (Govt.'s Response at 6-7.) There is no doubt that the disqualification of Lappen regarding the evidentiary hearing will be a difficulty for the Government in light of his extensive history and detailed knowledge of the case. Likewise, the United States' right to prosecute the matter through counsel of its choice is a significant consideration. However, given the unique circumstances that Lappen will testify as a necessary witness about the specific allegations by Georgiou concerning Lappen himself, we conclude that the disqualification of Lappen at the evidentiary hearing is necessary. Lappen's disqualification at the evidentiary hearing will not be a substantial hardship since the Government has been aware of the possibility of Lappen's disqualification for some time and it has another Assistant United States Attorney who has been involved in the habeas corpus portion of this case. We note that Lappen is disqualified from acting as the Government's attorney at the evidentiary hearing, but not as its attorney other than at the evidentiary hearing.

SUPPLEMENTAL APPENDIX SA-6

Memorandum Opinion Denying Rule 60(b) Motion — Excerpts

ECF No. 717 — September 28, 2026 — Jurisdictional Holding (pp. 7-15); Judicial Bias (pp. 23-25); Disqualified Prosecutor (pp. 16-22)

United States v. Georgiou, No. 2:09-cr-00088 (E.D. Pa.) (Quiñones Alejandro, J.)

I. Successive Habeas Petition

Defendant's claims fail for various reasons, including that they are brought through a motion that, while nominally filed pursuant to Rule 60, is a successive *habeas* petition filed without leave from the Court of Appeals.

A. Legal Standard

"[S]ince the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), second or successive § 2255 motions are barred unless they rely on either 'newly discovered evidence,' [28 U.S.C.] § 2255(h)(1), or 'a new rule of constitutional law,' [*id.*] § 2255(h)(2)." *Jones v. Hendrix*, 599 U.S. 465, 469 (2023). To ensure that petitioners comply with these requirements, "AEDPA created a statutory 'gatekeeping mechanism' for second or successive habeas petitions." *In re Hoffner*, 870 F.3d 301, 306 (3d Cir. 2017) (quoting *Felker v. Turpin*, 518 U.S. 651, 657 (1996)). "For a federal prisoner, . . . a 'second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.'" *Id.* (quoting 28 U.S.C. § 2255(h)). The relevant portion of § 2244 "requires a petitioner to 'move in the appropriate court of appeals for an order authorizing the district court to consider' a second or successive habeas petition." *Id.* (quoting 28 U.S.C. § 2244(b)(3)(A)). Only with the authorization of the Court of Appeals may a petitioner file a successive *habeas* petition. *See id.* at 307–08.

However, a petition need not be filed pursuant to § 2244 or § 2255 to be considered a successive *habeas* petition. *See Gonzalez*, 545 U.S. at 529–31. Depending on their substance, motions seeking relief from a judgment pursuant to Rule 60 will also be treated as *habeas* petitions. *See id.* Specifically, "a Rule 60(b) motion that seeks to revisit the federal court's denial on the merits of a claim for relief should be treated as a successive habeas petition." *Id.* at 534. This is because "alleging that the court erred in denying habeas relief on the merits is effectively

indistinguishable from alleging that the movant is, under the substantive provisions of the statutes, entitled to habeas relief." *Id.* at 532. But where a Rule 60 motion "confines itself not only to the first federal habeas petition, but to a nonmerits aspect of the first federal habeas proceeding," it need not be treated as a *habeas* petition. *Id.* at 534. This is because, "[i]f neither the motion itself nor the federal judgment from which it seeks relief substantively addresses federal grounds for setting aside the . . . conviction, allowing the motion to proceed as denominated creates no inconsistency with the habeas statute or rules." *Id.* at 533. If a court determines that a motion is a *habeas* petition and it finds that "a 'claim presented in a second or successive habeas corpus application' was also 'presented in a prior application[,]' . . . the claim must be dismissed." *Id.* at 530 (quoting 28 U.S.C. § 2244(b)).

B. Discussion

Defendant filed his 2017 *pro se habeas* petition pursuant to § 2255. (Doc. 307, at 2). In that petition, Defendant raised several claims which Judge Kelly summarized as follows:

> Georgiou's § 2255 Motion raises numerous issues, many of which flow from two primary complaints. First, Georgiou contends that unbeknownst to the defense, [a testifying co-conspirator named Kevin] Waltzer was acting as a government cooperator for approximately one year before June 2007 when Waltzer confessed to his crimes and began actively cooperating with the government. Georgiou concludes, from this view of the facts, that numerous legal errors occurred because Waltzer supposedly "was acting for his own purposes, to manufacture leads and evidence" for the government, rather than acting with the "mens rea" of a criminal. . . . In light of these supposed facts, Georgiou believes that numerous charges against him are infirm, and that his attorneys somehow could have used this evidence to impeach Waltzer (and presumably all the other evidence in the case) and change the outcome of the trial.
>
> Georgiou's second general attack on his conviction is that the government acted improperly by allowing Waltzer to speak directly, "one on one," with the AUSAs who were working with Waltzer and government agents in dozens of fraud investigations, including the investigation and prosecution of Georgiou. Again, Georgiou raises numerous claims that flow from this claim of government misconduct, and he suggests that Waltzer and the government attorneys conspired to frame him. Georgiou contends that the AUSAs were witnesses to the fraud and were conflicted in representing the government in light of their involvement with

> Waltzer; that the government should have provided this information to the defense, and that he was prejudiced — *i.e.,* if these errors had not occurred, somehow the result of the proceeding would have been different.

(Doc. 570, at 15–16). To supplement the record and aid the litigation of that petition, Judge Kelly held an evidentiary hearing in September 2017, (Docs. 397, 399, 431), and additional evidentiary hearings in November, (Docs. 466, 502–503), and early December of the same year, (Docs. 505, 512). By Order dated June 19, 2018, accompanied by a 186-page memorandum opinion, Judge Kelly denied Defendant's § 2255 motion on the merits. (Docs. 570–71). Based on the extensive briefing before him, the thorough evidentiary hearing, and the other records before him, Judge Kelly determined Defendant's claims were without merit, finding, *inter alia*: that "the government did not violate Georgiou's rights in connection with the disclosure of evidence concerning Waltzer's alleged cooperation and mental state" because that "information could not have made a difference at trial," (Doc. 570, at 152); that Defendant "cannot establish that any witness, other than himself, committed perjury while testifying either at trial or at the *habeas* evidentiary hearing," (*id.* at 154); and that "[t]he evidentiary hearing record is replete with consistent and credible testimony that the [FBI] agents and AUSAs worked together in guiding Waltzer in the undercover operation, and that there was nothing improper about their handling of Waltzer," (*id.* at 156).

By way of the instant motion, Defendant seeks relief from that judgment. (*See generally* Doc. 710). He raises several grounds for this relief appealing to Rules 60(b)(1) ("mistake, inadvertence, surprise, or excusable neglect), 60(b)(3) ("fraud . . . misrepresentation, or misconduct by an opposing party"), 60(b)(4) ("the judgment is void"), 60(b)(6) ("any other reason that justifies relief"), and 60(d)(3) ("fraud on the court"). Yet, despite these wide-ranging appeals to different authorities and his identification of several instances of perceived misconduct,

Defendant makes clear that he challenges, "not a checklist of errors," but rather a "Single Structural Defect." (Doc. 710, at 40). Core to that defect, he argues, was a "foundational misrepresentation" by AUSA Lappen "to Judge Kelly [that] the one-on-one undercover instructions [sent by AUSAs and agents] to Waltzer were 'ministerial.'" (*Id.*). This is a claim the Government made in support of its argument in opposition to a motion to compel production of messages between the Government and Waltzer, (Doc. 361, at 35), and was one of the reasons the Court offered for denying that motion, (Doc. 370). Without this alleged misrepresentation, Defendant argues, "the entire structure collapses" because Judge Kelly did not "compel production of the prosecutors' one-on-one communications with Waltzer — resting entirely on Lappen's misrepresentation that they were 'ministerial,'" and the resulting lack of such evidence led to an incomplete and unfair *habeas* proceeding. (Doc. 710, at 40–42). Defendant argues the culmination of these events was the Court's denial of his *habeas* petition, which accepted the Government's arguments. (*Id.* at 48).

Although Defendant argues that the instant motion "is a true Rule 60(b) motion under *Gonzalez*," because it alleges "fraud and misconduct claims targeting the integrity of the habeas proceedings," (*Id.* at 69), this Court disagrees. Regardless of how Defendant frames it, the substance of his claim is not that the Government's *argument* that certain communications with Walzer were "ministerial" prejudiced the proceedings; rather, it is that the Court's *acceptance* of that argument did. This is evident from Defendant's efforts to prove that "[t]he habeas testimony proved [the alleged misrepresentation] wrong from every direction," (*id.* at 41), and his efforts to show the consequences of the Court's acceptance of it, namely the denial of Defendant's *habeas* petition, (*see id.* at 48). Therefore, Defendant has not challenged "a nonmerits aspect of the first federal habeas proceeding," but has rather "alleg[ed] that the court erred in denying habeas relief on the merits." *Gonzalez*, 545 U.S. at 532–34. Accordingly, the Court construes Defendant's

pending motion as a successive *habeas* petition. *See Gonzalez v. Smith*, 2022 WL 10493557, at *4 (E.D. Pa. Oct. 18, 2022) (finding a Rule 60(b) motion to be a successive *habeas* petition where "the thrust of Gonzalez's entire motion" was that the Court wrongly decided the issue of ineffective assistance of counsel, despite Gonzalez's attempts to frame the motion as challenging the Court's determination that certain claims were procedurally defaulted, which would have been proper claim under Rule 60(b)); *Heleva v. Matthews*, 2021 WL 6118735, at *4 (M.D. Pa. Oct. 26, 2021) (finding Heleva's motion to be a successive *habeas* petition because it was "trying to relitigate a previously decided issue" where, "[i]n Mr. Heleva's past federal habeas proceeding, he claimed that his signature on his Rule 600 waiver was forged" and in the new motion "assert[ed] a very slight variation on that claim: that Monroe County prosecutors lied to the Court in his habeas proceedings when they wrote in a brief: 'a Rule 600 waiver was signed by the Movant.'").

Having established that Defendant's Rule 60 motion is a (successive) *habeas* petition, this Court also finds that it raises claims already "presented in a prior application." 28 U.S.C. § 2844(b)(1). In Defendant's Rule 60 motion, he again challenges the propriety of AUSA Lappen's contacts with the Government informant. (Doc. 710, at 40–41). This is the same challenge that Defendant raised in his § 2255 motion, (Doc. 307, at 6), which Judge Kelly rejected on the merits in June 2018, finding that "[t]he evidentiary hearing record is replete with consistent and credible testimony that the [FBI] agents and AUSAs worked together in guiding Waltzer in the undercover operation, and that there was nothing improper about their handling of Waltzer," (Doc. 570, at 156). The Court also notes that, even earlier, in March 2011, Judge Kelly rejected the same argument in his denial of Defendant's motion for a new trial. (Doc. 240, at 12–13). There, Judge Kelly found that Defendant's claim "that the Government somehow failed to produce communications from law enforcement agents to Waltzer instructing him how to behave during

his undercover contacts with Georgiou" was supported by "little or no evidence" and that the evidence offered — the declaration of a person who analyzed telephone records and concluded that unidentified communications were missing and showed a pattern of instructions between Walzer and the Government — was "pure speculation" that failed to "explain or cite to any records that would show missing communications or, more significantly, missing communications relating to instructions to Waltzer about his conduct in dealing with Georgiou." (*Id.*).

This Court also notes that Defendant's claims are multidimensional and overlapping and that his writing is convoluted and needs to be untangled in many cases. The Court has made every effort to view all of Defendant's claims broadly in light of his *pro se* status. *See Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244–46 (3d Cir. 2013) (discussing the obligation of a court to liberally construe *pro se* pleadings and other submissions, particularly focusing on imprisoned *pro se* litigants). To the possible but unlikely extent that any argument Defendant raised in the instant motion was not previously raised in his § 2255 motion, the fact remains that Defendant has presented the claims raised as entangled and "interdependent." (Doc. 710, at 49). He claims that they cannot be disaggregated. (*Id.*). As such, even if a particular claim raised in the instant motion was not, itself, raised before, it is still a component of the same argument on the merits that renders Defendant's motion a successive *habeas* petition. So, while the dismissal of such claims may not be required by § 2244, *see Gonzalez*, 545 U.S. at 530, they still form part of a successive *habeas* petition, which requires leave of the Court of Appeals before being brought in this Court, *Hoffner*, 870 F.3d at 306 (citing 28 U.S.C. § 2244(b)(3)(A)). Accordingly, this Court finds that Defendant's Rule 60 motion is not properly before the Court.

II. Insufficient Support for Relief Under Rule 60

In the interest of judicial economy, this Court will address Defendant's Rule 60 motion and, for the reasons set forth, finds that even if Defendant's motion were properly before the Court, the Court would be unable to grant Defendant the relief he seeks because his claims lack sufficient support to warrant such relief.

If Defendant's motion were not a *habeas* petition, (which it is), it would be a Rule 60 motion. Defendant purported to file the motion under Rules 60(b)(1) ("mistake, inadvertence, surprise, or excusable neglect), 60(b)(3) ("fraud . . . misrepresentation, or misconduct by an opposing party"), 60(b)(4) ("the judgment is void"), 60(b)(6) ("any other reason that justifies relief"), and 60(d)(3) ("fraud on the court"). He argues that AUSA Lappen made misrepresentations to the Court, warranting relief under Rules 60(b)(3) and 60(d)(3) for fraud on the Court, (Doc. 710, at 40–41, 62–64, 70–71); that Judge Kelly was biased against him during the § 2255 proceedings, rendering the Court's judgment in the same "void" and warranting relief, under Rule 60(b)(4), (*id.* at 42, 73–74); that the Order denying his earlier claim of judicial bias was mistaken, warranting relief pursuant to Rule 60(b)(1), (*id.* at 14–15, 74); and that these, and other miscellaneous defects, collectively warrant the Court's use of discretion under Rule 60(b)(6) to grant Defendant relief from the Court's judgment denying his § 2255 motion, (*id.* at 71–73, 75). Defendant is mistaken on all counts.

A. Legal Standards

"Rule 60(b) allows a party to seek relief from final judgment and reopen a case based on mistake or excusable neglect, newly discovered evidence, fraud, or the void or prospectively inequitable status of a judgment." *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 210 (2025) (citing Fed. R. Civ. P. 60(b)(1)–(5)). "Rule 60(b) also includes a 'catchall' provision — Rule

60(b)(6) — that allows a district court to reopen a case for 'any other reason that justifies relief.'" *Id.* (quoting Fed. R. Civ. P. 60(b)(6); *Kemp v. United States*, 596 U.S. 528, 533 (2022)). "Under Rule 60(d)(3), a district court can 'set aside a judgment for fraud on the court.'" *Hatchigian v. Int'l Bhd. of Elec. Workers Loc. 98 Health & Welfare Fund*, 610 F. App'x 142, 143 (3d Cir. 2015). "Fraud on the court 'must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision.'" *Id.* (quoting *Pizzuto v. Ramirez*, 783 F.3d 1171, 1180 (9th Cir.2015)).

"One who seeks such extraordinary relief from a final judgment bears a heavy burden." *Plisco v. Union R. Co.*, 379 F.2d 15, 17 (3d Cir. 1967). In the context of a Rule 60(b)(1) motion, the movant's burden is to prove the presence of mistake, inadvertence, surprise, or excusable neglect, Fed. R. Civ. P. 60(b)(1), by offering more than a conclusory belief, and instead offering evidence in support of their request for relief. *See Bidlack v. Chesapeake Appalachia, LLC*, 2012 WL 1657934, at *4 (M.D. Pa. May 11, 2012).

A party seeking relief pursuant to Rule 60(b)(3) has "the burden of proving fraud and misrepresentation" by "clear and convincing" evidence. *Floorgraphics Inc. v. News Am. Mktg. In-Store Servs., Inc.*, 434 F. App'x 109, 111 (3d Cir. 2011) (quoting, *Brown v. Pennsylvania Railroad Company*, 282 F.2d 522, 527 (3d Cir. 1960)). A party seeking relief pursuant to Rule 60(d)(3) bears the same burden. *Hatchigan*, 610 F. App'x at 143. "Clear and convincing evidence is evidence that is 'so clear, direct, weighty and convincing as to enable the [fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.'" *Burrell v. United Healthcare Ins. Co.*, 2001 WL 873221, at *1 (E.D. Pa. July 30, 2001) (quoting *United States Fire Ins. Co. v. Royal Ins. Co.*, 759 F.2d 306, 309 (3d Cir.1985)) (alteration in original). To meet this burden, "the movant must establish that the adverse party engaged in fraud or other

misconduct, and that this conduct prevented the moving party from fully and fairly presenting his case." *Stridiron v. Stridiron*, 698 F.2d 204, 207 (3d Cir. 1983).

To obtain relief pursuant to Rule 60(b)(4), a movant must demonstrate that the judgment is "void." Fed. R. Civ. P. 60(b)(4). A judgment is void if it is "so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. . . . The list of such infirmities is exceedingly short; otherwise, Rule 60(b)(4)'s exception to finality would swallow the rule." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010). "'A judgment is not void,' for example, 'simply because it is or may have been erroneous.'" *Id.* (quoting, *Hoult v. Hoult*, 57 F.3d 1, 6 (1st Cir. 1995)). Rather, "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *Id.* at 271. As such, to prevail under Rule 60(b)(4), a movant bears the burden of proving that the judgment from which they seek relief was premised on one of those grounds, or a ground "on par with" them. *See id.* at 273.

"[R]elief under Rule 60(b)(6) is available 'only when Rules 60(b)(1) through (b)(5) are inapplicable.'" *BLOM*, 605 U.S. at 211 (quoting *Kemp*, 596 U.S. at 533). The mere inapplicability of Rules 60(b)(1) through 60(b)(5) however, is not enough to justify relief under Rule 60(b)(6); that requires a demonstration of "extraordinary circumstances." *Kemp*, 596 U.S. at 533 (quoting *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863, n. 11 (1988)). "[L]egal error does not by itself warrant the application of Rule 60(b). . . . Since legal error can usually be corrected on appeal, that factor without more does not justify the granting of relief under Rule 60(b)(6)." *Pridgen v. Shannon*, 380 F.3d 721, 728 (3d Cir. 2004) (quoting *Martinez–McBean v. Government of Virgin Islands*, 562 F.2d, 908, 912 (3d Cir.1977)).

B. Discussion

The numerous substantive arguments that Defendant makes in support of his claim for relief pursuant to Rule 60 fail to meet the above-cited standards. A careful review of the record before the Court indicates that Defendant's claims are without evidentiary support. Defendant is, therefore, unable to carry his burden as the movant under any of the provisions he has appealed to for relief. As discussed, Defendant's claims are multidimensional and overlapping, and his writing is convoluted. To the extent that any of the vague arguments are not specifically addressed below, the Court finds, nonetheless, that such vague arguments would not change the Court's conclusions and do not warrant additional discussion. Notably, Defendant is not always clear to which section of Rule 60 each particular argument appeals. In such cases, the Court has attempted to construe which section fits most appropriately and, where it is unable to do so, has applied the most generous standard in light of Defendant's *pro se* status. Even under this approach, Defendant's claims fail to meet his burden under Rule 60 so as to justify its extraordinary relief.

i. Prosecutorial Misconduct

Defendant alleges that AUSA Lappen made misrepresentations to the Court during the *habeas* proceedings, which constitutes fraud that would justify relief under Rules 60(b)(3) and 60(d)(3). As discussed, such claims must be proven by clear and convincing evidence. *Floorgraphics*, 434 F. App'x at 111. Defendant has not carried this burden.

Chief among Defendant's examples of alleged misrepresentations is the claim by AUSA Lappen that any text messages conveying instructions to the informant, Waltzer, were ministerial — a claim that Defendant argues was proven wrong by testimony at the *habeas* proceeding. (Doc. 710, at 40–41). However, as discussed above, this claim is belied by the record and rooted in "pure speculation" that failed to "explain or cite to any records that would show missing communications

or, more significantly, missing communications relating to instructions to Waltzer about his conduct in dealing with Georgiou." (Doc. 240, at 12–13). Defendant repeats this allegation in the instant motion, but has not provided any evidence to support this assertion or contradict the Court's then finding.

The record shows that AUSA Lappen represented to the Court that any "text messaging" between AUSAs and Waltzer "was ministerial in nature and could have pertained to any number of investigations." (Doc. 361, at 35). Defendant's claims that "[t]he *habeas* testimony proved [this] false," (Doc. 710, at 41), although accompanied by citations to the record, are unsupported. Defendant has identified testimony concerning phone calls and one-on-one conversations between AUSAs and Waltzer. (*Id.* (citing Doc. 482-1, at 26; Doc. 480-1, at 58–61, 79, 97; Doc. 483, at 61–64)). However, the identified testimony only reveals the existence of phone calls and in-person conversations between AUSAs and Waltzer; not text messages or emails. Moreover, AUSA Lappen has not denied that he or other AUSAs engaged in telephone conversations or other one-on-one conversations with Waltzer. (*See* Doc. 361, at 35–36; Doc. 483, at 61–64). Accordingly, Defendant has not provided any evidence to support that AUSA Lappen made a misrepresentation to the Court regarding communications with Waltzer.

Another alleged misrepresentation that Defendant raises is what he refers to as the "Bellamy fraud." (Doc. 710, at 28). Essentially, Defendant argues that prosecutors misrepresented to the Court that a witness, Jeffrey Bellamy, was available to testify at Defendant's evidentiary hearing on September 19, 2017, because he was scheduled to testify in another trial that day and the day before. (Doc. 710, at 29). Defendant argues this was a misrepresentation because AUSA Lappen and his colleague, AUSA Lesley Bonney, allegedly knew at the time that Bellamy would no longer be testifying at the other trial due to questions of his credibility. (*Id.*). Defendant claims

that he "immediately sought to abort" the examination of this witness, but that his request was denied. (*Id.* at 29). In the evidentiary hearing, Bellamy went on to testify that Defendant had offered him $10,000 for favorable testimony, (*id.* at 30), so Defendant argues that this alleged misrepresentation was calculated to "inject fabricated testimony" unfavorable to him, (*id.* at 63). He further argues this was a violation of his rights under *Massiah v. United States*, 377 U.S. 201 (1964). (*Id.* at 31, 63).

Upon review of the record, the Court finds neither clear and convincing evidence of fraud involving Bellamy, nor evidence of a *Massiah* violation. There is no record in this matter of Bellamy testifying on September 18 or September 19, 2017, in the trial in which he was a cooperating defendant. (*See* 2:15-cr-00180, Docs. 1310–11). However, that alone is not evidence that AUSA Lappen or AUSA Bonney made a fraudulent misrepresentation about Bellamy's presence that would warrant relief under Rule 60(b)(3) or Rule 60(d)(3), rules which require "the movant [to] establish that the adverse party engaged in fraud or other misconduct, and that this conduct prevented the moving party from fully and fairly presenting his case." *Stridiron*, 698 F.2d at 207. First, Defendant has not presented evidence that this misrepresentation was fraudulent. He asserts that "Lappen's office had already provided written notice in [the matter] *United States v. Khalil Smith*, Cr. No. 15-180 (E.D. Pa.), that Bellamy would not be testifying" and that "Lappen and AUSA Leslie [*sic*] Bonney knew this," but has not offered any evidence to support this claim. (Doc. 710, at 29). There is also conflicting evidence in the record, namely, AUSA Lappen's sworn testimony that he was not aware of any notices sent out by his office the previous day regarding Bellamy because he had been occupied with the ongoing evidentiary proceedings in Defendant's *habeas* case. (Doc. 483, at 115–19). This Court finds no reason to doubt the sincerity of this testimony, particularly in light of Judge Kelly's repeated remarks that Lappen testified credibly

during the evidentiary hearing. (*See* Doc. 570, at 48, 54). And even without this testimony, Defendant's conclusory assertions would be insufficient to carry his burden of proof.

Moreover, even if there were evidence of a fraudulent misrepresentation, Defendant still has not shown that it prevented him "from fully and fairly prosecuting his case." *Stridiron*, 698 F.2d at 207. To the contrary, the record shows that Defendant did not "immediately s[eek] to abort" the questioning of Bellamy, as he claimed to have, (Doc. 710, at 29), but rather initially attempted to question Bellamy, (*see* Doc. 481, at 138). Moreover, Defendant, himself, remarked in his proposed findings of fact from the evidentiary hearing that "Bellamy provided no relevant testimony pertaining to the due process violations before the Court's consideration." (Doc. 556-2, at 14). Crediting this, Judge Kelly indicated that he did not "rely on these facts relating to the testimony of Bellamy" — namely, that Defendant claimed Bellamy would appear on Defendant's behalf and that he did not — "in resolving any of the specific claims presented by Georgiou in this § 2255 petition." (Doc. 570, at 131). Finally, the potentially harmful statement to Defendant's case — that Defendant offered Bellamy $10,000 to testify falsely about Waltzer — was elicited through Defendant's direct examination of Bellamy, not by the Government. (Doc. 481-1, at 143–44). Accordingly, there is no evidence that any misrepresentation prevented Defendant from fairly presenting his case.

Further, this Court finds that the Government's presentation of Bellamy as a witness did not violate Defendant's rights under *Massiah*. Under *Massiah*, a defendant is "denied the basic protections of [the Sixth Amendment] when there [i]s used against him at his trial evidence of his own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel." *Massiah*, 377 U.S. at 206. Defendant argues that introducing Bellamy as a witness constituted a *Massiah* violation because the Government

"deploy[ed] a government informant against a defendant at his own habeas hearing without disclosure" and at the hearing, "Bellamy testified that Mr. Georgiou offered him $10,000 to testify falsely about Waltzer." (Doc. 710, at 30–31). However, a review of the record reveals that (1) as discussed, the testimony harmful to Defendant's case was first elicited during Defendant's examination of the witness, (Doc. 481-1, at 143–44) and (2) that the conversation that Defendant was asking about in that examination was one that *he initiated* with Bellamy to discuss communications that Waltzer had with Bellamy, (*see id.* at 141–42). There is no indication here that Bellamy, to the extent he was operating as an agent of the Government, deliberately elicited the statements of Defendant at issue.

Another example of alleged misconduct that Defendant raises is that AUSA Lappen "controlled" the habeas proceedings, despite being a "disqualified prosecutor" — the title Defendant uses to refer to AUSA Lappen throughout his motion. (*See* Doc. 710, at 16–17). Defendant argues that AUSA Lappen was a "disqualified prosecutor" because Judge Kelly disqualified him from representing the Government at Defendant's evidentiary hearing. (*Id.* at 43). Because of this, Defendant argues, Lappen's "control" of the *habeas* litigation, was improper. (*Id.*). As examples of AUSA Lappen's alleged control of the *habeas* litigation, Defendant identifies the Court's adoption of a portion of the Government's proposed findings of fact as its own, and says that this means that Lappen "scripted" the Court's denial of his § 2255 motion, (*id.* at 24, 48); points to Lappen's testimony at the evidentiary hearing that the alleged concealment of certain contacts between Waltzer and the FBI was "no more relevant than if Waltzer had 'breakfast at McDonald's,'" and argues this is evidence the prosecutor "controlled those proceedings and ensured the suppression was never fairly examined," (*id.* at 26); argues that Lappen urged the use of the wrong standard of review in the *habeas* litigation, and that this "recasting [of the case] was

deliberate — the disqualified prosecutor deploying the wrong standard to ensure the claims he needed to fail would fail," (*id.* at 26–27); claims that AUSA Lappen "blocked nine witnesses from the § 2255 hearing," (*id.* at 31); argues that AUSA Lappen, by directing AUSA Bonney to object to testimony, blocked critical impeachment evidence, (*id.* at 35); and argues that there was "witness intimidation" because the AUSA Lappen contacted defense witnesses, after which some asserted their Fifth Amendment rights, (*id.* at 68).

As a preliminary matter, it is undisputed AUSA Lappen was disqualified from representing the Government at the evidentiary hearing. (Doc. 413). By Order dated August 10, 2017, Judge Kelly compelled AUSA Lappen to testify at the evidentiary hearing as a necessary witness and, therefore, ordered him "disqualified from acting as the Government's attorney at the evidentiary hearing." (*Id.*). However, this Order explicitly specified that AUSA Lappen was "disqualified from acting as the Government's attorney at the evidentiary hearing, but not as its attorney other than at the evidentiary hearing." (*Id.*). The Order, by its terms, extends the scope of the disqualification *only* to the evidentiary hearing. Moreover, the Court's disqualification order was entered "[p]ursuant to Rule 3.7 of the Pennsylvania Rules of Professional Conduct," which requires that lawyers not act as advocates at trials where they are likely to be necessary witnesses. (*Id.* (citing Pa. R. Prof'l C. 3.7)). That "Rule only prohibits a lawyer who is likely to be a necessary witness from acting as an advocate '*at a trial*.'" *Martin v. Turner*, 2011 WL 717682, at *5 (E.D. Pa. Feb. 18, 2011) (emphasis in original); *see also Caplan v. Braverman*, 876 F. Supp. 710, 711 (E.D. Pa. 1995) (disqualifying an attorney from representation at trial, but noting that this does not prevent the attorney from representing their client at pre-trial and post-trial matters). Accordingly, AUSA Lappen's participation in the *habeas* proceedings before and after the evidentiary hearing at which he was a witness was entirely permissible.

Defendant's argument's that AUSA Lappen, nonetheless, exercised impermissible "control" over the *habeas* proceedings and outcome is without support. Moreover, this argument ignores the role of Judge Kelly in the *habeas* proceedings. Defendant's arguments focus on instances where Judge Kelly made a finding that adopted the Government's position or made a ruling in favor of the government on an issue. These judicial acts, however, are not evidence of AUSA Lappen "controlling" the outcome of Defendant's *habeas* proceedings or "scripting" the Court's findings of fact. Instead, they are evidence of something that happens in courts every day: one party making an argument and the Court, in accordance with its independent judgment, accepting, or not, the argument, in part or in whole. That Defendant disagrees with the outcome does not render the Court or the rulings corrupt.

Further, there is no evidence to support Defendant's claims of "witness intimidation" or of prosecutors improperly blocking witnesses. Defendant argues that such intimidation must have occurred because AUSA Lappen contacted an incarcerated defense witness, Adam Lacerda, who was represented by counsel, and that witness then asserted his Fifth Amendment right. (Doc. 710, at 68). Defendant speculates that this was "a cover-up" designed "to prevent testimony" that might impeach Waltzer. (*See id.*). However, Defendant provides no evidence that points to AUSA Lappen's intentions or of the substance of his communications with Lacerda or his counsel. Further, the record before the Court contains nothing suggesting improper witness contact. Rather, the record demonstrates that any Government contact with Lacerda and other witnesses was Court-sanctioned, with Judge Kelly observing that "Georgiou and the government agreed upon twenty witnesses and, due to Georgiou's *pro se* status, the government was in the unusual position of contacting and scheduling Georgiou's witnesses, which it did diligently. . . . A number of proposed witnesses were in dispute, which required the Court to determine who were permitted to testify."

(Doc. 570, at 19). The record further shows that the Government did not speak directly with Lacerda, but rather "spoke with the attorney for Adam Lacerda, Mark Cedrone, Esquire, who advised that Lacerda would . . . invoke his Fifth Amendment right and refuse to testify." (Doc. 449, at 2 (quoting Doc. 427, at 6 n.2)). It also shows that any decision not to testify was voluntary, with "Lacerda and [another witness named] Vandergrift cho[osing] not to testify by pleading the Fifth Amendment through their attorneys at the start of the evidentiary hearing." (Doc. 570, at 20 (citing Doc. 468)). As such, while Defendant claims that the Government intimidated some defense witnesses and blocked others, the evidence before the Court does not support such contentions and shows no indication of direct contact between the government and those witnesses, but rather shows Court-sanctioned contact with their attorneys, voluntary assertions of some witnesses' Fifth Amendment rights, and the independent decision-making of the *habeas* judge about whether to allow witnesses to testify.

In sum, Defendant has raised numerous allegations of prosecutorial misconduct and has failed to meet his burden of proof to obtain relief for any of them.

ii. Judicial Bias

Defendant also argues that he is entitled to relief because his *habeas* proceedings were allegedly rendered unfair by the bias of the presiding judge. (Doc. 710, at 42). Defendant asserts that an impartial judge would have ruled differently in his case. (*See id.*). He argues that judicial bias rendered the judgment on his *habeas* petition void, warranting relief pursuant to Rule 60(b)(4). (*Id.* at 73–74). As support for his claim, Defendant argues that Judge Kelly's bias against him was revealed during Defendant's trial, when "Judge Kelly declared in open court, with the jury present: 'So what does that have to do with [Georgiou] committing this massive fraud?'" (*Id.* (quoting Doc. 176-1, at 74–75) (alteration in original)). Defendant refers to this as "a *per se* violation of

due process." Putting aside that this instance of alleged bias occurred at trial, rather than at the *habeas* proceeding of which Defendant purports to question the integrity, Defendant's claim of bias is belied by the very record he cites. An examination of the context of this question by Judge Kelly reveals two important facts: (1) he asked this question in a discussion about whether to allow a certain line of questioning, and (2) he asked this question to counsel *at sidebar*. (Doc. 176-1, at 72–76). It is clear, therefore, that Judge Kelly was not accusing Defendant of anything, but rather inquiring about the relevance of an argument to the allegations underlying Defendant's trial; and that, even if Judge Kelly's statement could be interpreted to be accusatory, it was not made in open court where it might influence the jury, but rather, in private. Therefore, Defendant's argument that Judge Kelly was biased against him, or that Judge Kelly somehow influenced the jury against him at trial, lacks sufficient support.

Defendant also argues that Judge Kelly's bias was revealed when he provided "assistance" to the Government by instructing prosecutors "to 'keep objecting' during the § 2255 evidentiary hearing." (Doc. 710, at 43). Defendant supports this claim with multiple transcript citations. However, examination of those citations reveals that, rather than coaching the prosecution or encouraging them to limit the testimony that Defendant sought to admit, Judge Kelly was merely telling the Government how to format its discontent with certain content for the record. (*See* Doc. 480, at 69; Doc. 550-1, at 64–65; Doc. 552, at 38).

Accordingly, Defendant has failed to show any bias of Judge Kelly that would render his *habeas* proceedings "affected by a fundamental infirmity" and, therefore, void. *See United Student Aid*, 559 U.S. at 270. He has, therefore, failed to show that the Court's judgment was void, as required by Rule 60(b)(4).

Notably, this is not the first time Defendant has raised claims of judicial bias. Defendant previously argued the same in August 2021, before the Honorable C. Darnell Jones, II, in a petition for a Writ of *Audita Querela*. (Doc. 642, at 128–35). Judge Jones rejected this claim and indicated that "Defendant failed to act with the requisite diligence in seeking recusal." (Doc. 675, at 2). Defendant argues that this was a mistake, warranting relief pursuant to Rule 60(b)(1), because Judge Jones raised the issue of timeliness *sua sponte*, after the Government failed to raise the issue and forfeited it. (Doc. 710, at 74). Based on the record, Judge Jones did not err by raising untimeliness *sua sponte*. Defendant's argument that "[u]ntimeliness in this context is a claims-processing rule, not a jurisdictional bar," (Doc. 710, at 82), is unavailing. It matters not whether untimeliness is a claim-processing rule or a jurisdictional bar in this context. Even if it is a claim-processing rule, the relevant rule is that the issue of untimeliness is forfeited where it is not raised until after a District Court has reached the merits. *Lizardo v. United States*, 619 F.3d 273, 278 (3d Cir. 2010) (citing *Eberhart v. United States*, 546 U.S. 12, 19 (2005)). This rule clearly contemplates instances where timeliness is raised by a party for the first time on appeal. Here, however, the District Court raised timeliness while considering the issue of judicial bias on the merits; it was not yet "after the District Court had reached the merits." *Eberhart*, 546 U.S. at 19. Moreover, "[i]t is now widely recognized that judges have discretion to raise procedural issues in habeas cases." *Long v. Wilson*, 393 F.3d 390 (3d Cir. 2004); *see also Day v. McDonough*, 547 U.S. 198, 210 (2006) ("In sum, we hold that district courts are permitted, but not obliged, to consider, *sua sponte*, the timeliness of a state prisoner's habeas petition."). Accordingly, Defendant has failed to show a mistake warranting relief under Rule 60(b)(1).

SUPPLEMENTAL APPENDIX SA-7

Order Denying Certificate of Appealability

ECF No. 722 — October 14, 2026

United States v. Georgiou, No. 2:09-cr-00088 (E.D. Pa.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	**CRIMINAL ACTION**
	:	
v.	:	**NO. 09-0088**
	:	
GEORGE GEORGIOU,	:	
Defendant, pro se.	:	

ORDER

AND NOW, this 14th day of October 2026, upon consideration of Defendant's *pro se motion for relief from judgment pursuant to Rule 60*, (Doc. 710), the Court's Memorandum Opinion and Order denying said motion, (Docs. 717–18), Defendant's *pro se notice of appeal*, (Doc. 719), and United States Court of Appeals for the Third Circuit's, ("Third Circuit"), Order remanding proceedings to the District Court to either grant or deny a certificate of appealability, (Doc. 720),[1] it is hereby **ORDERED** that, for the reasons set forth in the footnote, a certificate of appealability **SHALL NOT ISSUE**.[2]

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[1] The Court notes that Defendant filed a request for a certificate of appealability on October 11, 2026, (*see* Doc. 721), without the Court directing Defendant to do so. *See* Rule 11(a) of the Rules Governing § 2255 Proceedings ("Before entering the final order, the court *may* direct the parties to submit arguments on whether a certificate should issue.") (Emphasis added). As such, the Court — while taking note of the arguments raised in Defendant's request — limits its consideration to the arguments raised in Defendant's underlying motion, (Doc. 712), and the Court's reasoning in its Memorandum Opinion and Order denying that motion, (Docs. 717–18).

[2] Procedurally, on May 18, 2026, Defendant filed a *pro se* motion for relief from judgment pursuant to Federal Rule of Civil Procedure ("Rule") 60. (Doc. 710). By Order dated September 28, 2026, accompanied by a Memorandum Opinion, this Court denied the Rule 60 motion, finding that the motion constituted a successive *habeas* petition filed without first obtaining leave from the Third Circuit, and further because it otherwise failed on the merits. (Docs. 717–18). In the Order, this Court did not determine whether a certificate of appealability should issue to Defendant pursuant to Federal Rule of Appellate Procedure 22(b). (*See id.*). On October 7, 2026, Defendant filed a timely notice of appeal, challenging this Court's ruling. (Doc. 719). On October 9, 2026, the Third Circuit remanded proceedings to this Court "for the sole purpose of either issuing a certificate of appealability or stating reasons why a certificate of appealability should not issue." (Doc. 720).

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro
NITZA I. QUIÑONES ALEJANDRO
Judge, United States District Court

Federal Rule of Appellate Procedure 22(b) provides that "in a 28 U.S.C. §2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed. R. App. P. 22(b)(1). Section 2253 sets forth the rule that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this requirement, a "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). If the Court issues a certificate of appealability, it "shall indicate which specific issue or issues satisfy the showing required." 28 U.S.C. § 2253(c)(3). Third Circuit Local Appellate Rule 22.2 requires the same. *See* 3rd Cir. L.A.R. 22.2. The local rule further provides that "[i]f an order denying a petition under § 2254 or § 2255 is accompanied by an opinion . . . it is sufficient if the order denying the certificate references the opinion." *Id.*

Here, the Court incorporates the reasoning set forth in its Memorandum Opinion dated September 28, 2026. (*See* Doc. 717). In the opinion, in addition to finding a procedural defect in Defendant's motion, this Court addressed Defendant's claims on the merits and found that Defendant's substantive claims of constitutional violations were "without evidentiary support." (*See id.* at 16). Based on this lack of evidentiary support, this Court herein concludes that no "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 484. For that reason, the Court finds that Defendant has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Accordingly, the Court does not find cause to issue a certificate of appealability.

SUPPLEMENTAL APPENDIX SA-8

SEC Response to Motion for Reconsideration — Excerpts

Civ. ECF No. 66, at pp. 15-18 — April 11, 2023 — the $21 million as a "conservative" approximation of the $26 million forfeiture

SEC v. Georgiou, Civil No. 2:09-cv-00616-MMB (E.D. Pa.)

Criminal Action has also rejected Defendant's efforts to have counsel appointed for his post-trial litigation in the Criminal Action. (*See, e.g.*, Criminal Action Dkt. No. 535, 547, 576, 675.) The same result should follow here.

II. DEFENDANT'S CHALLENGE TO DISGORGEMENT IN THE PROPOSED FINAL JUDGMENT SHOULD BE REJECTED.

Aside from the various aspects of the Motion seeking reconsideration of the Court's summary judgment ruling, Defendant Georgiou attacks the SEC's proposed final judgment seeking disgorgement of $21,079,074, plus prejudgment interest. Once again, Defendant mischaracterizes the law and the facts.

Defendant cites the Supreme Court's decision in *Liu v. SEC*, 140 S. Ct. 1936 (2020) to argue that disgorgement should be reduced because the remedy is limited to "net profits." However, that is precisely what the SEC sought in its motion for final judgment. (Dkt. 61 at 3). Georgiou further argues that the Court did not make relevant findings in the Criminal Action. He is mistaken. The Court determined that Georgiou earned $26 million from his misconduct, which served as the basis of the forfeiture order. And the Third Circuit affirmed this portion of the order: "[T]he forfeiture is proper under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) because the $26,000,000 subject to forfeiture constitutes, or is ***derived from proceeds traceable to the offenses of which the defendant was convicted.***" *United States v. Georgiou*, 777 F.3d 125, 146-47 (3d Cir. 2015) (internal quotation omitted) (emphasis added).

To the extent Defendant takes issue with the concept of "net" profits, he misunderstands the *Liu* standard. The Supreme Court did hold that "courts must deduct legitimate expenses before ordering disgorgement." *Liu*, 140 S. Ct. at 1939. However, the key word is "legitimate." The record in the Criminal Action was clear: there were no "legitimate expenses" in this case. As proven at trial, and affirmed by the Third Circuit, the facts showed that Georgiou

sought to artificially inflate the prices of, and the apparent demand for, Avicena, Neutron, Hydrogen Hybrid and Northern Ethanol from at least the spring of 2004 through September 17, 2008. *See Georgiou*, 777 F.3d at 130-31. This allowed Georgiou and associates under his control to profit on their holdings by (1) using the artificially inflated values of the stocks as collateral to obtain margin (i.e., to borrow money from a broker to purchase stock or withdraw cash) in brokerage accounts, and (2) selling their holdings at inflated prices. *Id.* As this Court recognized, the trial judge at sentencing found the evidence against Georgiou "overwhelming." Quite simply, it is impossible to credibly argue there were any "legitimate" expenses associated with this fraudulent scheme, much less any such expenses which might justify a reduction of Defendant's disgorgement obligation.

Not surprisingly, numerous courts have rejected similar attempts to leverage *Liu* in order to deduct expenses related to a fraudulent enterprise. *See SEC v. Liu*, No. 21-56090, 2022 WL 3645063, at *3 (9th Cir. Aug. 24, 2022) (refusing to deduct payments made "to prevent the exposure of Liu's fraudulent activities"); *SEC v. Jones*, No. 21-98, 2022 WL 17882114, at *2 (N.D. Ga. July 7, 2022) (no deduction for cost of presentation meetings that "involve[d] client recruitment efforts"); *SEC v. CKB168 Holdings, Ltd.*, No. 13-5584, 2022 WL 3347253, at *5 (E.D.N.Y. Aug. 12, 2022) (no deduction for expenses incurred in developing purported educational tool that in fact was means by which new investors were solicited to perpetuate the illegal pyramid scheme); *SEC v. Fisher*, No. 21-60624, 2022 WL 13650848, at *4 (S.D. Fla. Oct. 21, 2022) (travel and dinner-seminar expenses were "spent in furtherance of drawing in more victims [and] are not, by any stretch of the imagination, legitimate business expenses"); *SEC v. Griffithe*, No. 20-124, 2021 WL 6551385, at *2 (C.D. Cal. Nov. 18, 2021) (no deduction for loans that were "taken out for the purpose of facilitating the fraud on investors"); *SEC v.*

Voight, No. 15-2218, 2021 WL 5181062, at *8 (S.D. Tex. June 28, 2021) (no deduction where defendants' own records did not address any business expenses and review of records revealed only a Ponzi scheme, not a legitimate business); *SEC v. Mizrahi*, No. 19-2284, 2020 WL 6114913, at *3-4 (C.D. Cal. Oct. 5, 2020) (refusing to deduct from a disgorgement award various claimed expenses due to insufficient evidence of their value independent of fueling the fraudulent scheme). Georgiou's flawed reasoning fits this pattern, and the Court should reject it.

In any event, the law is clear that, even post-*Liu*, "'[t]he amount of disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation,' and 'any risk of uncertainty should fall on the wrongdoer whose illegal' conduct created that uncertainty.'" *SEC v. Shah*, No. 22-3012, 2022 WL 17979812, at *4 (S.D.N.Y. Dec. 28, 2022) (quoting *SEC v. de Maison*, No. 18-2564, 2021 WL 5936385, at *2 (2d Cir. Dec. 16, 2021) (summary order)). This has long been the law. *See SEC v. Teo*, 746 F.3d 90, 105-06 (3d Cir. 2014); *see also SEC v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989). "'Once the SEC has met the burden of establishing a reasonable approximation of the profits causally related to the fraud, the burden shifts to the defendant,' who is 'obliged clearly to demonstrate that the disgorgement figure was not a reasonable approximation.'" *Shah*, 2022 WL 17979812, at *4 (quoting *de Maison*, 2021 WL 5936385, at *2); *see also Razmilovic*, 738 F.3d at 31-32; *SEC v. Genovese*, 553 F. Supp. 3d 24, 47 (S.D.N.Y. 2021), *appeal dismissed*, 2022 WL 199951 (2d Cir. Jan. 5, 2022); *SEC v. Cope*, 2021 WL 653088, at *2 (S.D.N.Y. Feb. 19, 2021). Defendant has not, and cannot, establish that there were any "legitimate expenses" in light of the findings in the Criminal Action that his entire enterprise was designed to manipulate the public market for four stocks and that Georgiou

achieved ill-gotten gains of $26 million. The SEC's conservative disgorgement figure of approximately $21 million is therefore a reasonable approximation of those ill-gotten gains.

Defendant's argument is truly of no impact to the Commission's proposed Final Judgment. The Commission has asked that the disgorgement order be deemed satisfied by the much larger forfeiture order in the Criminal Action. So even if Defendant is correct about the SEC's disgorgement figure being too high – which he is not – it would not matter. The proposed Final Judgment will impose no additional monetary obligation upon or sanction against the Defendant. The Court should enter the Commission's proposed disgorgement order as part of the Final Judgment.

CONCLUSION

The Court should deny Defendant's Motion, and enter Final Judgment against the Defendant as requested by the Commission.

Respectfully submitted,

s/ Scott A. Thompson
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Dated: April 11, 2023

SUPPLEMENTAL APPENDIX SA-9

SEC Memorandum in Support of Summary Judgment — Excerpts

Civ. ECF No. 16-1, at pp. 7-8, 17-19, 33 — January 15, 2016 — the $21,079,074 request and its stated basis

SEC v. Georgiou, Civil No. 2:09-cv-00616-MMB (E.D. Pa.)

INTRODUCTION

In accordance with this Court's November 30, 2015 Order, Plaintiff Securities and Exchange Commission ("Commission") moves for summary judgment in this enforcement action against defendant George Georgiou, based on the doctrine of collateral estoppel.

In 2010, Georgiou was found guilty on all counts of a criminal indictment filed in this district alleging securities fraud under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, as well as conspiracy, wire fraud and aiding and abetting based on his unlawful stock manipulation. The jury found that Georgiou implemented a comprehensive and sophisticated scheme to manipulate four companies' stock – Avicena Group, Inc. ("Avicena"), Neutron Enterprises, Inc. ("Neutron"), Hydrogen Hybrid Technologies, Inc. ("Hydrogen Hybrid"), and Northern Ethanol, Inc. ("Northern Ethanol"). Georgiou was sentenced to 300 months imprisonment and the court also imposed restitution of $55.8 million and forfeiture of $26 million.[1] The United States Court of Appeals for the Third Circuit affirmed the conviction on January 20, 2015.

At the criminal trial, the jury was presented with overwhelming evidence of Georgiou's wrongdoing in the form of emails, telephone records, account documents, trade analysis, and testimony from participants in the scheme, including an undercover FBI agent and an actively cooperating witness. This evidence established that, in separate but related schemes, Georgiou orchestrated and directed manipulative trading in the four stocks by using numerous nominee

[1] On February 12, 2009, the Commission filed a complaint against Georgiou alleging that he engaged in a series of fraudulent schemes to manipulate the market for the common stock of four microcap companies in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder (the "Civil Action"). On the same date, Georgiou was indicted on one count of conspiracy, four counts of securities fraud, and four counts of wire fraud, for the same conduct alleged in the Commission's complaint (the "Criminal Action"). The Civil Action was stayed pending resolution of the Criminal Action.

accounts held at offshore broker-dealers that he controlled, and using a variety of traditional manipulative techniques, including executing or directing matched trades, wash sales, or other prearranged trades, marking-the-close, and paying illegal kickbacks in exchange for purchases.

Confronted with the same factual allegations made in this matter, the jury concluded that, beyond a reasonable doubt, Georgiou engaged in securities fraud and stock manipulation, finding that he had conducted these manipulations with the intent to artificially inflate each company's stock price and to create the false impression of an active and liquid market for these otherwise thinly traded stocks. In light of this determination, the Commission should be granted summary judgment based on collateral estoppel in this action.

STATEMENT OF FACTS[2]

As proven at trial, and affirmed by the Third Circuit Court of Appeals, from at least the spring of 2004 through September 17, 2008, Georgiou sought to artificially inflate the prices of, and the apparent demand for, Avicena, Neutron, Hydrogen Hybrid and Northern Ethanol (collectively the "Target Stocks"). *See United States v. Georgiou*, 777 F.3d 125, 130-31 (3d Cir. 2015). This was done to allow Georgiou and his associates to profit on their significant holdings of the stocks by (1) using the artificially inflated values of the stocks as collateral to obtain margin (i.e., the ability to borrow money from a broker to purchase stock or withdraw cash) in brokerage accounts and (2) selling their holdings at inflated prices. *Id.* These fraudulent schemes resulted in profits to Georgiou of approximately $21 million, and caused losses to investors and others exceeding $55 million.

[2] The facts set forth herein were presented to the jury in the criminal matter and substantially mirror those alleged in the Commission's Complaint. All factual citations are to paragraphs of the Statement of Undisputed Facts ("Facts").

gains. In an April 2008 recorded conversation, Georgiou described his plans to orchestrate a major pump and dump in Hydrogen Hybrid using a "ten million piece mailer." (Facts ¶ 57.) Georgiou was to be compensated for his manipulation scheme with millions of HYHY shares. (Facts ¶ 58.)

During the course of Georgiou's manipulation of HYHY, he discussed the scheme in recorded calls describing the progress of the team that he has "on the payroll" to attempt to move the stock price up to $3.00 per share. (Facts ¶ 59.) Ultimately, Georgiou was able to manipulate HYHY's stock price to a high of $2.70 on June 20, 2008. (Facts ¶ 60.)

C. The Caledonia and Accuvest Frauds

In addition to manipulating the market for these four stocks, Georgiou defrauded, and ultimately greatly damaged, two of the Bahamanian firms through which he placed his manipulative trades.

1. Caledonia

In December 2006, Georgiou convinced representatives of Caledonia to allow him to trade on margin through a nominee account with a pledge of $15 million worth of Avicena and Neutron stock as collateral. (Facts ¶ 62.) In entering into this margin agreement, Georgiou never disclosed that the value of these securities was artificially inflated as a result of his manipulative activities. (Facts ¶ 63.) By securing margin loans based, at least in part, on collateral he knew was artificially valued, Georgiou defrauded Caledonia.

As a result of the decline in Avicena and Neutron's stock prices throughout the latter part of 2007, along with other trading losses in the account, Georgiou's margin debit balance (or outstanding loan balance) grew to approximately $22,000,000. (Facts ¶ 66.) Georgiou repeatedly made false promises to Caledonia representatives that he would cover the deficit, but he never transferred assets into the account. (Facts ¶¶ 64 – 65.) Despite continually failing to deliver the

promised funds to the Caledonia account, Georgiou's cash withdrawals from the fraudulently obtained margin account at Caledonia totaled $2.1 million. (Facts ¶ 68.) Ultimately, Caledonia's clearing firm liquidated Caledonia customer accounts to cover the debit balance associated with Georgiou's trading, which resulted in some Caledonia clients losing all of their funds that were commingled in Caledonia's margin accounts. (Facts ¶ 69.)

2. Accuvest

In October 2007, Georgiou opened an account in the name of Zaitech Enterprises Limited at Accuvest. (Facts ¶ 70.) Although Ron Wyles, one of Georgiou's associates, made the arrangements to open this account, Georgiou controlled it. (Facts ¶ 71.)[6]

The account was opened and funded with 1.5 million shares of HYHY, with no cash ever being deposited into the account. (Facts ¶ 75.) Ultimately, the margin account was collateralized by, among other stocks, Avicena, Hydrogen Hybrid and Northern Ethanol and Georgiou borrowed against that collateral to make trades on margin. (Facts ¶ 76.) In touting the value of the companies that Georgiou was using as collateral, Georgiou never disclosed to representatives of Accuvest, that the values of the stocks were artificially inflated as a result of Georgiou's manipulative activities. (Facts ¶ 77.)

From January to September in 2008, Georgiou made several millions dollars-worth of cash withdrawals on margin based on the inflated value of one or more of these stocks. (Facts ¶ 78.) As the margin balance grew, Georgiou falsely represented to Accuvest that his investment "group" would be transferring in significant assets to cover the margin deficit. (Facts ¶ 79.) However, Georgiou never repaid the cash he withdrew, or added any other assets to the account. As the value

[6] The government presented evidence at trial that three email addresses that send trading directions to various brokerage firms, and purported to be for other individuals such as Ron Wyles, were actually controlled by Georgiou. (Facts ¶¶ 72 – 74.)

of these manipulated stocks plummeted, Accuvest was left with two illiquid securities that Georgiou had been manipulating. (Facts ¶ 80.)

D. Georgiou was Charged with Securities Fraud

On February 12, 2009, the Commission filed this civil enforcement action – the same day that an indictment was entered by the United States Attorney's Office for the Eastern District of Pennsylvania in a parallel criminal action. The civil complaint and the indictment allege the same misconduct by Georgiou detailed above. Both allege that Georgiou engaged in a series of fraudulent schemes to manipulate the market for the same four securities: Avicena; Neutron; Hydrogen Hybrid; and Northern Ethanol. (Facts ¶ 87.) Both allege that Georgiou directed manipulative trading techniques such as matched trades, wash sales, marking the close, and other prearranged trades. (Facts ¶ 88.) Both set out, in great detail, the manner in which Georgiou perpetrated the manipulations. (Facts ¶ 89.) Both allege that Georgiou took numerous steps to attempt to conceal his involvement in this scheme through the use of multiple nominee accounts, and email accounts in other people's names. (Facts ¶ 90.) Both allege that using these techniques allowed Georgiou was able to manipulate the market for these stocks, and to also defraud two broker-dealers into providing significant margin to Georgiou based on the artificially inflated value of those stocks – all in order to earn significant ill-gotten profits. (Facts ¶ 91.)

Not surprisingly, the documents also charge the same central violation – securities fraud based on market manipulation under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. (Facts ¶ 92.)

E. Georgiou was Convicted at Trial

This civil action was stayed, pending Georgiou's criminal trial. At that trial, the Government presented extensive testimony and audio recordings supplied by Waltzer and the

Jersey Sec., Inc., 101 F.3d 1450, 1474 (2d Cir. 1996) (citations omitted); *see also SEC v. Teo*, 746 F.3d 90, 104 (3d Cir.) *cert. denied*, 135 S. Ct. 675 (2014) ("From the early days of the SEC's pursuit of restitution, its enforcement mission plainly has been front and center.")

A federal district court's authority to order disgorgement in a Commission enforcement action is well established. *See SEC v. Manor Nursing Ctrs.*, 458 F.2d 1082, 1104 (2d Cir. 1972). Disgorgement is designed to compel wrongdoers to "give up the amount by which [they were] unjustly enriched." *SEC v. Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987). As discussed in this memorandum, Georgiou realized at least $20.9 million in illegal profits by making profitable trades after manipulating public stock prices, and by obtaining fraudulent margin loans based on artificially inflated stock values. Georgiou should be ordered to disgorge his profits

In addition to disgorgement, the Court should also order Georgiou to pay prejudgment interest on his illegal profits. "In the context of Section 10(b) and Rule 10b-5 actions, proof of the defendants' scienter is sufficient to justify an award of prejudgment interest." *Chester*, 41 F. Supp. 2d at 529; *see also SEC v. Sargent*, 329 F.3d 34, 40 (1st Cir. 2003) (award of pre-judgment interest prevents defendant from profiting from illegal conduct). Given the egregious conduct at issue here, such an award is warranted.

In SEC enforcement actions, courts routinely calculate prejudgment interest in the same manner that the Internal Revenue Service uses to calculate tax underpayments under 26 U.S.C. § 6621(a)(2). *See SEC v. U.S. Funding Corp.*, Civ. No. 02-2089, 2006 U.S. Dist. LEXIS 24789, at *22 (D.N.J. Apr. 11, 2006); *First Jersey*, 101 F.3d at 1476; *Antar*, 97 F. Supp. 2d at 588 (citing cases). Therefore, Georgiou should be held liable for disgorgement of $21,079,074 million, and prejudgment interest of $2,069,251.