UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States Securities and Exchange Commission,

Plaintiff,

v.

Jason Bo-Alan Beckman

Defendant,

Case No. 11-cv-574 (MJD/FLN)

Response to Motion for Summary Judgment and to Proceed

RESPONDENT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOVE TO PROCEED

In response to the Plaintiff's Motion for Summary Judgment, the defendant seeks of the court the denial of such motion and moves to Proceed.

The civil case 11-cv-574, *U.S. Securities and Exchange Commission (SEC) v. Beckman,* the genesis leading to this motion, following a stay due to the associated criminal case, is now presented before the court as the Plaintiff is requesting a *Summary Judgment* in their favor.

The Plaintiff has attempted to articulate their position in law and in right and has made an effort to establish a foundation that there is no genuine dispute of material facts that would have such an impact on a civil case of such suggested similarity to that of a parallel criminal case. However, in their attempts, they fall short of their required burden. Accordingly, the defendant reiterates the plea of denying the Plaintiff's motion and offers a *Motion to Proceed.*

Federal rules require that, an "opposing party is obligated to respond to a *Summary Judgment Motion*; if the opposing party does not respond, Summary Judgment should, if appropriate, be entered against the party" (Fed. R. CIV. P. 56(e)(2)), subsequently, the Defendant responds.

The Plaintiff establishes a foundation of their argument in the "ARGUMENT" section of the Plaintiffs' *Securities and Exchange Commission's Memorandum of Law in Support of its Motion for Summary Judgment* (p.5): "in light of [his] criminal convictions" the Plaintiff argues, "the defendant is estopped from contesting the SEC's allegations, and thus, there is no genuine issue with respect to any aspect of the SEC's Complaints against him" (p.5).

The Plaintiff is declaring clearly and aggregately that the "order" of a process gives foundation and cause to their motion. They attempt to establish their basis, in law (as they so suggest in the heading of their Motion), that because of a defendant's criminal convictions, the defendant is estopped from contesting, thus, their exists no genuine issue with respect to any aspect of the complaint against him.

Law, however, does not support this argument in either its declaration or logic, as to take such a position would preclude the consideration or opportunity to oppose the genuineness of issues in such opposition. The Plaintiff appears to be putting, "the carte before the horse" so to speak.

The plaintiff attempts to skirt its burden of demonstrating in specificity the claims of which are not genuine; "the movant bears the initial responsibility of informing the district court of the basis for its motion and must identify those portions of the record which it believes demonstrates the absence of genuine issues of material facts" (Torgenson v. City of Rochester, 643, f.3d 1031, 8th Cir. 2011), a blanket claim that the Plaintiff's allegations are similar to those in a criminal action that resulted in a conviction is not enough; the scope to which a civil case is limited by the allegations supported by facts or evidence

connected to the complaint, is not necessarily expanded or granted by convictions in a criminal trial of the same defendant.

Further guides the Court; evidence of consideration "must be viewed in the light of the most favorable to the non-moving party, giving the non-moving party the benefit of all reasonable references" (Kenney v. Swift Transp. Inc. 347. F.3d 1041, 8th Cir. 2003) and the "Plaintiff must prove more than labels, and formulaic recitation of the elements of a cause of action will not do" (Bell At'l Corp v. Twombly, 550 US 544,555 127 S. Ct. 1955, 167 L Ed. 2d 929, 2007), as merely stating legal conclusions is not sufficient (Springdale Educ. Assn. v. Springdale School Dist.133, F. 3d 649, 651, 8th Cir. 1991, quoting USCFTC v. Cook, 8th Cir., 2011). "The propriety of summary proceedings turns on the sufficiency of process and the adequate safeguarding of the parties interest" (SEC v. Wencke, 9th Cir. 1986) and not on the mere presence of a criminal conviction.

"Summary judgment is appropriate only if the pleadings, the discoveries and disclosure materials on file and any affidavits, show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law" (Fed. R. Civ. P. 56(c)); not that a prior criminal conviction creates the basis and automatic conclusion in support of estoppel and therefore no genuine dispute. Furthermore states the 8th Circuit Appellate court; "summary judgment is an extreme remedy that should only be granted when the movant has established a right to the judgment beyond controversy" (Inland Oil &. Transport v. U.S, 600 F.2d 1338, 8th Cir. 1988).

"Summary proceedings are inappropriate when parties would be deprived of a full and fair opportunity to present their claims and defenses" (U.S. CFTC v Cook, 8th Cir) and while there is at issue, similarities between cases, the court reviews the record as a whole and disregards evidence favorable to the summary judgment moving party that the a jury is not required to believe (SEC v. Kelly, 765 F. Supp 2d 201, 8th Cir. 2011).

II. Elements Not Met

As described by Plaintiff, the 8th Circuit precludes relitigation of issues in a subsequent proceeding if the following elements are met (p.6): (1) the issue sought to be precluded must be the same as that involved in the prior litigation, (2) that issue must have been actually litigated, (3) it must have been determined by a valid and final judgment, and (4) the determination must have been essential to the judgment (p.6, from Lovell v. Mixon, 719 F.2d 1373, 8th Cir. 1983).

The 8th Circuit is clear on its direction of the first element and so referenced by the Plaintiff, "the issue sought to be precluded *must be the same*" (p.6, emphasis added) or "the issue subject to estoppel was *identical*" (Farm Family Mut. Ins Co. v. Peck, 143, from API Inc. v. Home Ins Co, 2012, 8th Cir., emphasis added) and "under Minnesota law, a four part test is used to determine whether collateral estoppel applies"; (1) issue was *identical* to one in a prior litigation (Manning v. SA Challenger, Oct 2011, 8th Cir.; Ill Farmers Ins. Co. v. Reed 662, NW, 2d 529,531 Minn. 2003; Johnson v. Miera, 926, F. 3d, 741, 743, 8th Cir. 1991; emphasis added).

The Plaintiff attempts to circumvent such elements in arguing that courts may "enter a summary judgment on the collateral estoppel effects of prior convictions even if the charges are not identical, provided the factual determinations underlying the convictions are sufficient to establish violations in the subsequent action" (p.7, citing Taylor v. Sturgell, quoting New Hampshire v. Maine, 532 U.S. 742, 748, 121, S. Ct. 1808, 149 L. Ed. 2d 155, 2008). However, only to the extent that underlying facts would not be in dispute and this burden the *Movant* bears; to show that material facts in the case are undisputed (Celotex Corp, 477 US @ 327-23 and Mems v. City of St. Paul Fire & Safety Serv, 224 F.3d, 735, 8th Cir. 2000) and "in ruling on a motion for summary judgment, a court must not weigh evidence or make

credibility determinations" (Koehn v. Indian Hills Cnty Coll, 371 F.3d, 394, 396 8th Cir. 2004). The underlying issues raised by the Plaintiff in their complaint are in direct dispute.

The burdens of the Plaintiff, while different than that of a criminal proceeding, are still burdens that need be met. The evidence provided in the Plaintiff's exhibits and lengthy presentation to the court in its TRO hearing for example, as to facts to support their allegations, have either been proven erroneous in the criminal trial or have not been subject to confrontation[1]. The right of the defendant to present a defense to the specific allegations and to confront, is rooted in compulsory process and confrontation clause of the 6th amendment and due process clauses of the 5th amendment, furthermore, the 6th amendment rights to confrontation and to compulsory process are made applicable through due process of the 14th Amendment (U.S. Constitution; provisions of due process of law & case annotations, I. General, 3. Applicability).

Furthermore, it appears counter-intuitive that one should express caution to try a case of lower burden, if one is so adamant that the same facts that they intend to present, were so convincing to a similar issue that suggestively satisfied a higher burden.

III. Violations of the Antifraud Provisions of the Securities, Exchange and Advisers Acts

The Plaintiff continues in their *Memorandum of Law* in support of their motion, to address the *Violations of the Antifraud Provisions of the Securities Act, The Exchange Act and the Advisers Act* (p.8-13), in which they proceed to layout their position as to the violations and the elements required to establish violations. While the Defendant does not wish to "try the case" in a response to the summary motion, the

[1] The Aguilar exhibits (ex. 1-4) that the Plaintiff has relied so heavily on, do not include all documented activities; (for example, trial trans. at pp. 500 and 550, Woodbeck testimony; he invested $100,000 in Oxford Private Client Group; or the additional $1.1 mm the defendant invested; Aguilar does not include this activity & has not been subject to confrontation).

extent to which the Plaintiff goes to argue, compels the defendant to address the issues to further support its opposition.[2]

The Plaintiff engages in throwing multiple parties into one "bucket" and addresses them as "one" and does not consistently consider or argue to the individual cases, charges and allegations, creating confusion and a "muddying of the waters" on various matters. To such extent, for the record, the Defendant expresses a concern regarding procedure; the Defendant does express his position of "Separation of Defendants", as the record is replete with evidence establishing differences in actions, mind set, location, motive and causality leading clearly to prejudice and extensive spill-over[3].

The Plaintiff admits that it must prove: that the defendant [Beckman],: (1) engaged in prohibited conduct, (2) in connection with the offer, sale or purchase of a security, (3) by means of interstate commerce (p.9, citing SEC v. Quan, 2014, Minn. 2014, interpreting sections 17(a), Section 10(b) and Rule 10b-5) and SEC v. Shanahan, 646 F.3d 536,541. 8th Cir. 2011) and that "Scienter is required to prove violations of Section 10(b), Rule 10b-5, Section 17(a)(1) and Section 206(1), while sections 17(a)(2), 17(a)(3) and 206(2) are proven by showing a defendant acted at least negligently" (p.10, citing Shanahan, 646, F.3d at 541; SEC True North Fin. Corp., 909 F. Supp. 2d, 1073, 1122, Minn, 2012).

"Whether one is a primary violator of Section 10(b) of Securities and Act of -34, 15 USCS §78(j);(b), Section 17(a) of SEC Act of '33, 15 USCS §77q(a) and SEC Rule 10b-5, 17 CFR §240 10b-5, or an aider or abettor turns on the nature of the one's acts" (SEC v. Kelly).

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[2] The Defendant does not believe the Plaintiff has carried its burden, but without notice by the Court, the Defendant offers additional rebuttal directed by: "If the moving party has carried its burden, the non-moving party must demonstrate the existence of specific acts in the record that create a genuine issues for trial" (Krenik v. County of LeSueur, 47 F.3d, 953, 957, 8th Cir. 1995).

[3] Heightened prejudice resulting from joint trial is to be avoided (US v. Martinez, 2011, CA6 Ohio 2011 FED App 528N), consideration for separate trials when evidence would be materially different between joint trial and separate trial and the presence of substantial prejudice ((Title 2, Chap 13, §841(V)(198)), if prejudice shown from spillover of prejudice ((Title 18(1) chapter 96 §1963 (11)(B)(1)(22)).

The Plaintiff points to the Defendant's convictions on multiple counts of wire fraud and mail fraud declaring that these events, "together with SEC's evidence from its emergency motion as to Beckman's control of The Oxford Private Client Group, LLC as an investment adviser"- this "satisfies all of the requirements for collateral estoppel on the securities fraud in these cases" (p.11).

Allegations and "evidence" provided in the emergency motion and attached as exhibits in the Plaintiff's *Motion for Summary Judgment*, have either been proven erroneous in content or in application in the criminal trial or have not been confronted. The Plaintiff discusses issues of similarity by means of referencing the multiple mail and wire fraud counts of the criminal trial but fails in its burden as to the precise similarities to their allegations, the similarly required elements and the similar considerations in the criminal trial. The factual determinations needed to satisfy elements of counts in the criminal trial are not the same as the requirements to satisfy the elements in the civil matter, a burden of the movant.

The Plaintiff states that, "the jury had to find that the Defendant devised a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises and concealment of material facts" and "when assessing the collateral estoppel effect of a prior criminal conviction on a related civil action, the primary inquiry is whether the factual bases for the criminal conviction are the same bases which the civil suit relies upon" (p.11-12).

The second element required is the "connection with the offer, sale or purchase of a security"; (1) The criminal trial had no consideration by a jury or special verdict form as to the determination if the methodology was in fact a "security" and (2) the SEC fails to adequately show "in connection with".

The Supreme Court has stated that; "in SEC enforcement actions of a connection with the offer or sale of securities should be construed not technically and restrictively but flexibly to effectuate its

remedial purposes" (SEC v. Zandford, 533, 2002), at the same time, "the statement must not be construed so broadly as to convert every common law fraud that happens to involve securities into a violation of the securities statutes" (Id @ 820, quoting from reference in SEC v. Morris, 8th Cir. 2012). Furthermore, of the nine wire fraud counts against the Defendant for example, seven of them involved people that the defendant had never met or advised.

The Investment Adviser's Act of 1940 stipulates: "the act defines an investment adviser as any person, who, for compensation, engages in the business of advising others as to the value of securities or as the advisability of investing in, purchasing or selling of securities". The defendant, nor Oxford Private Client Group, received advisory fees for the business associated with the currency program. The facts show that annual advisory fees went down when money was invested in the currency program as the funds were transferred out of the advisory business and to another company and program. Neither Oxford Private Client Group (PCG) nor the Defendant generated an advisory fee on such assets. Moreover, the Defendant could not have engaged in "advising" those that he never spoke to or never met.

If the SEC cannot establish, as alleges, that a defendant made a material misrepresentations in order to obtain additional funds for improper use it will not have met the *in connection with*" (SEC v. Private Equity Mgmt., 2009), considering that the Plaintiff has provided no evidence as to any "additional funds" that were obtained from investors[4] outside of the funds already present within oxford Private Client Group that then were transferred out. The evidence shows that the Defendant did not speak with or even know most of the investors and did not garner advisory fees on those assets invested in the Currency program. The Plaintiff fails again in its burden, providing another genuine issue of dispute.

[4] There is no evidence demonstrating that the Defendant or Oxford Private Client Group raised additional funds of significance towards the Currency program that they did not already have under management. When the assets left Oxford PCG custodial firms (Merrill Lynch, Bear Stearns, or JPM Morgan) the assets were no longer considered assets under management by Oxford Private Client Group, effectively no longer under the advisory of the Defendant, and so stipulated by the *SEC Investment Management Division* in its review and conclusion that a "no action letter" be submitted to Oxford Private Client Group and Defendant (criminal trial exhibit).

In addition, the Plaintiff points to exhibit 8 as evidence of relationship of the Defendant to Oxford Private client Group during the period of 2006-2009, and the registration status is from 2011, two-five years after the alleged period, making the exhibit mute and not applicable and another of their claims disputable with genuineness.

IV. Violation of Securities Transaction Registration Provision

The Plaintiff adds that "once the Commission establishes a *prima facia* violation, the defendant assumed burden of proving that the securities offering qualified for a registration exemption" and that from the period of July 2006-July 2009 the "investments offered were investment contracts and therefore securities" (p.14). The Plaintiff furthers its explanation; "an investment contract exist where (1) a person invests his or her money, (2) in a common enterprise and (3) is led to expect profits from the efforts of the promoter or a third party (p. 14, citing SEC v. Edwards, 540 US 389, 394 2004, SEC v. W.J. Howey Co., 328, US 293, 298-99, 1946).

Daily, millions of investments are made with the expectation of profitability; far be it for an individual to invest in a proposition or strategy with the intent or expectation to lose money. Accordingly, sections (1) and (3), without proper context, are no barometer or basis of argument to establish a violation.

The issue of commonality, explains the Plaintiff, is one of vertical, horizontal commonality or both, but the 8th Circuit has not definitively ruled on it (p.14, Siaz v. Herzog, 2006 WL 2418950 @#8 D. Minn., 2006)) and the facts, contrary to the Plaintiff's suggestion, do not satisfy either the vertical or horizontal commonality test.

In brief, as to *broad*; there was no link between the "investors fortunes and the efforts of the promoter" (p.15), as the Defendant did not share in profits of the strategy. The Defendants fortune or efforts had no bearing on the fortune of the investors and the there is no evidence that supports this connection in its true form. The defendant did not run, trade or manage the currency program, nor did his "fund raising" determine the profitability or fortunes of the investors.

As to *strict*, "the fortunes of the investors" were not "tied to the fortune of the promoter" (p.15). There is no established connection in testimony or evidence, between defendants income and investors returns. What is documented however, is that the defendant was paid a fee (as for agent or finders) not predicated or associated to performance of the program and he did not share in the profits of the investors.

As to *horizontal* commonality, there is no evidence to demonstrate that the defendant "commingled the investor's money in pooled accounts" nor did he use their fortunes to trade currencies. The underlying facts are replete with evidence that the defendant never traded currencies, was not involved in dealings with the financial intermediaries nor did he demonstrate or take action of knowingly commingle funds into "pooled accounts".

In addition, the disclosures and amendments presented in the account documents to investors, for example, indicate clearly that the program subscribed to a "methodology" that attempted to obtain an objective; common industry language describing the efforts of a methodology towards an investment goal, strategy or objective; not the creation of a security.

V. Negligence and Scienter

The Plaintiff also provides a list of statements and alleged claims and concludes that they are the "very same facts that form the core of the Securities fraud allegations against the defendant" (p.13). The Plaintiff merely provides a laundry list of aspects of a fraud admittedly run and conducted by others, while providing no facts as to the Defendants knowledge of "every" aspect and or "scienter". A component of scienter, "which includes claims under Rule 10b-5, the allegations should give rise to more than just plausible or reasonable inference of scienter, requiring claims to state with particularity, facts giving rise to a strong inference that the defendant acted with the required state of mind" (Elam v. Neidorft, 544 F.3d 921, 8th Cir., 15 USC §78(u)-4(b)(2)(A)).

"Questions regarding timing of statements or omissions, in relationship to investments and fraudulent acts, cannot be resolved in a motion to dismiss" (SEC v. Morris, 8th Cir. 2012), just as natural aspects cannot be concluded from a summary motion from an estoppel when such factors have not been considered by a jury in the suggested parallel case. In the 8th Circuit, "a defendant may only be liable as part of a fraudulent scheme based on misrepresentations and omissions under Rules 10b-5(a) (or (c)) when the scheme also encompasses conduct beyond those misrepresentations or omissions" (Public Pension Fund Grp. v. KV Pharms. Co. 679, F.3d 972, 8th Cir. 2012). Further, it is "insufficient to show that a defendant should have known that a material statement or omission was false or misleading, as that is a viable claim of negligence but not of fraud (SEC v. Shanahan, 646, F.3d 536, 8th Cir. 201, re: Ceridian Corp. SEC's litigation, 542, F.3d, 240, 8th Cir. 2008).

Based on the exhibits provided by the Plaintiff, no reasonable fact-finder could determine "intent to deceive, manipulate or defraud" (SEC v. Morris, 8th Cir. 2012) and if silence was of issue, "silence,

absent a duty to disclose, is not misleading under Rule 10b-5"[5] (Basic Inc. v. Levinson, 405 U.S. 224). It is not conclusively established that the defendant violated the various statutes and the Commission has far from established the elements of scienter as it pertains to their jurisdiction.

The facts are clear that the Currency program, its marketing materials, account opening documents and disclosures were created by others, not the Defendant and "depending on others to ensure the accuracy of disclosures to purchasers and sellers of securities, even if inexcusably negligent, is not severely reckless conduct that is the functional equivalent of intentional securities fraud" (SEC v. Pasternak, 561 F.2d 459, DNJ, 2008, SEC v. Shanahan 2011). In such regard, the Plaintiff has clearly fallen short of meeting its required burden. The basis of factual determinations, so as to include the jurisdiction of the commission, is in the determination of "the connection with the offer, sale or purchase of a security", none of which was considered by a jury or indicated in a special verdict form in a subsequent proceeding towards the same in this context as a "security" or to degree of.

To negligence; the "failure to use the degree of care that a reasonable person of ordinary prudence and intelligences would be expected to exercise in the situation" (Fla. State Board of Admin v. Green Tree Financial Corp. 270 f.3d 645, 8th Cir. 2001). In such regard, the actions taken by Defendant Beckman clearly took actions unlike other Defendant's and did so with professional assistance and guidance. Furthermore, "a jury's unique competence in applying the reasonable person standard will preclude summary judgment on the issue of negligence" (Fla. State Board v. Green Tree Financial Corp.).

The SEC has presented no evidence specifically (through expert or lay testimony) with "respect to the degree of care that an ordinarily careful person would use under the same or similar circumstances and whether defendant exercises reasonable care or whether the Defendant undertook an appropriate investigation before making statements to prospective investors" (SEC v. Shanahan, 2011, Cir. 8th).

[5] Testimony of Berman; after extensive investigation all lawyers determined that self-reporting was not required.

Within the evidence that the Plaintiff refers they will rely, it shows to what extent the Defendant went and that he was the only one who attempted investigations and others actions and did so with the guidance of purportedly some of the nations' best. This leaves no room for a jury to speculate as to the Defendant exercising a duty far above the common person, therefore, finding in support for the Defendant in such matters (Shanahan) and to such degree within the context of a securities industry and relationships.

There is a difference between wrongful acts versus functions of value, for example, legitimate work that is not inextricably tied to fraudulent procurement of funds, accordingly can be separated (SEC v. Capital Solutions Monthly Income Fund, 2014, 8th Cir.). Facts in evidence support that the only legitimate business operating was the Defendant's advisory firm and that all funds invested through the advisory were returned to investors and not subject to a fraud[6].

VI. To Injunction and Disgorgement

The Plaintiff expresses its requirement towards injunctive relief; (1) that an act actually occurred and (2) the act will occur in the future (SEC v. Capital Solutions Mo. Income Fund, 2014, 8th Cir. Citing SEC v. Commonwealth Chem. Inc., 574, F. 2d 90). In assessing whether there is a likelihood of future violations, courts consider; "the degree of scienter, the isolated or recurrent nature of the violation, the Defendant's recognition that his conduct was wrongful and the likelihood that the Defendant's professional occupation will allow for future violations and the Defendant's sincerity in assuring against future violations" (p.16).

[6] In addition to evidence in the criminal trial, the Prosecution conveyed the same message in their opening statement.

The Plaintiff has not met its burden to establish a judgment in their favor on acts of Defendant, and "even if it is found that an act occurred, the existence of past violations may give rise to an inference that there will be future violations, however, the SEC must go beyond mere facts of past violations and demonstrate a realistic likelihood of recurrence" (SEC v. Capital Solutions, 8th Cir), as in determining the likelihood of future violations, the court must assess the totality of the circumstances surrounding the Defendant and violations.

The Defendant presently faces a lengthy sentence, essentially precluding him from re-entering the industry. Times have changed since the adoption of such language and the advancement of technology has provided access to information at one's fingertips; the history of the events have been made public via the vast information highway known as the "web" and will forever be there, additionally precluding such re-entry.

Furthermore, the Plaintiff's assumption that the Defendant would want to be a part of the industry in such a capacity is arrogant and egregiously assumptive, for in addition to the havoc it has caused for so many, he and has family have lost everything from the events and he has clearly demonstrated no interest in the industry as the Plaintiff suggests, and should that not be enough, the Defendant's anticipated counter claims will surely satisfy such a concern[7].

The Plaintiff explains that disgorgement is an equitable remedy with a dual purpose; (1) to deprive a wrong doer of his unjust enrichment and (2) to deter others from violating securities laws (pg. 17, ref: SEC v. Teo, 746, F.3d 90, 105) and that "exactitude is not required, as disgorgement need only be

[7] Also, the Defendant has already provided adequate documentation to the Court concerning his professional and academic interests and has informed the Court of his intent to submit counter claims & allegations against the Plaintiff. Furthermore, had the Plaintiff attempted to resolve such conflict prior, the Defendant would have seen little reason to object to a similar request of some type of injunction, in support of the spirit to minimize costs to the court and to bring an end to such a process.

a reasonable approximating of profits causally connected" (p.17, citing First City Fin Crp., 890, F.2d at 1231).

The Plaintiff furthers its position by discussing the "five principals which should guide the determination of disgorgement" (p.18). This list however, is merely considerations of totaling an amount of disgorgement, as disgorgement is guided by a determination of: a reasonable approximation of profits casually connected to the violation it pertains to or includes. The evidence presented or suggested to by the Plaintiff in its Aguilar exhibits 3 and 4 for example, has provided at a best, an extreme approximation, not a reasonable approximation as to the Defendant and the testimony or evidence has not been confronted.

The disgorgement remedy is remedial, rather than punitive, a court cannot order disgorgement of an amount above that which is wrongfully acquired. The SEC bears the burden of showing it is entitled to the remedies it seeks by a preponderance of the evidence (SEC v. Bauer, civ. No. 03-1427, 2012, citing Steadman v. SEC, 450, US 91, 103, 101).

Furthermore, the manner of their request resembles relief more than a remedy. "Disgorgement wrests ill-gotten gains, from the hands of a wrong doer. Disgorgement does not aim to compensate the victims of wrongful acts as restitution does" (CFTC v. Rosenberg, 85 F.2d 424, 2000), "disgorgement is to deprive the violator of his ill-gotten gains" (CFTC v. US Bank, quoting CFTC v. ACO Fin. Corp, 28 F Supp 2d, 104, 1998), but "the SEC seeks disgorgement of wrongfully ill-gotten funds, while not explaining what remedial purpose would be served by such remedy" (SEC v. Brown) and even when the "remedy is intended to deter misconduct by its members of the securities industry in general, it must be remedial, not punitive" (Beck v. SEC, 430 F.2 673, 6th Cir. 1970). There is no remedy found from granting disgorgement, especially one of such magnitude relative to the alleged "net benefit" to the Defendant (Aguilar exhibit); "disgorgement is an equitable remedy, its purposes are to provide remedy

and to deprive the defendant of unjust enrichment, not to punish" (SEC v. First City Fin Corp, 890 F.2d 1215, 281 US App, DC 410, 1989) and "as long as the measure of disgorgement is reasonable" (SEC v. Patel, 61 F.3d, 137).

To define the flow of funds as "profits and unjust enrichment" in this context is not enough. Unjust enrichment requires restitution, which measures the remedy by the gain obtained by defendant and seeks disgorgement of that gain" (Palmer v. Unisys Corp, 637, Iowa 2001), in other words, when damages are based in unjust enrichment, a defendant is liable only to the extent of the enrichment (Trieweiler v. Sears, 852, 689, Neb 2004) and presently, the Defendant faces substantial restitution, exponentially beyond a personally alleged "enrichment".

Furthermore, the term "proceeds", in federal money laundering statutes are to be construed to mean "profits", rather than 'gross receipt"; "in *Santos*, the US Supreme Court held that the term 'proceeds' to mean 'profits' in certain situations. Determining exactly which situations not only divided the Justices but also divided lower federal courts in their efforts to interpret profits"(US v. Cloud, 4th Cir., No 10-4057, 2012). The evidence provided by the Plaintiff through their exhibits (Aguilar) does not meet the required burden and the work product (material, evidentiary basis or foundation), is legitimately and genuinely contested.

VII. Civil Claims

The defendant joins the Plaintiff in support of the dismissal of claims for civil penalties.

VIII. Summary

It is clear that the Plaintiff has not met their required burden on many fronts, including those required for estoppel and have fallen short on excusing all material facts and issues towards and from their allegations as genuinely not in dispute; there remain numerous material issues of dispute in these matters and has been so established by the Defendant.

Furthermore, the Plaintiff, on numerous occasions, commonly refers to the criminal case and its *finality* (a measure of consideration towards estoppel), yet, the Defendant presently exercises his constitutional right in the 8th Circuit Appellate Court, on his direct appeal.

Additionally and of procedural interest and concern, the Plaintiff has provided numerous consents from numerous entities, all of which are represented by the same individual. Despite these facts, they make a claim of disclosure in their conclusion of; "the proposed final judgments fully resolve all of the SEC's claims against the consenting defendants and relief defendants. The terms of the proposed settlements are fair and understandable; there has been no collusion in reaching the settlements and entry of the proposed judgment would serve the public interest".

Considering that one entity, one person, suggestively represents all of the entities, collusion amongst all of the parties is literally unavoidable. As to *understanding* and *fairness*, the Oxford Private Client Group (PCG) for example, consents to disgorgement of millions and millions of dollars when it has not, at any time or in any adjudication process been found so culpable. When there is no evidence or material facts pointing to such benefits to PCG, yet it concedes to such a motion would seem to disserve the public interest; as the right to proper representation and the protection of Constitutional rights should far outweigh the agenda of reaching a settlement.

The statistical probability of so many entities agreeing to the same terms in such aggregate, if they were truly represented individually with their interest in mind, nears or approaches zero. It is evident that too few have been granted authority over too many for so many with too much conflict of interest. There lies direct conflict, between PCG (along with defendant) and Cook, Oxford Global Partners and other Oxford entities for example; demonstrated by the law suits initiated by the Defendant and PCG domestically (in this Court) and abroad.

While the defendant equally desires to conclude these matters, principle and justice speak loudly, compelling a response to the Plaintiff's motion and the Defendant respectfully request a denial of such motion and the granting to Proceed.

April 18, 2015

Respectfully submitted,

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