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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MATTHEW J. WERTHE dba HSR WEALTH MANAGEMENT, Defendant.	Case No.: 23cv0815-L-DDL **ORDER GRANTING SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR MONETARY AND INJUNCTIVE RELIEF** **[ECF No. 36]**

Pending before the Court in this securities fraud action is a motion for monetary and injunctive relief filed by Plaintiff United States Securities and Exchange Commission ("SEC"). (ECF No. 36.) Defendant Matthew J. Werthe, proceeding *pro se*, filed a response (ECF No. 37), and the SEC replied (ECF No. 38). The Court decides the matter on the papers submitted without oral argument. *See* Civ. L. R. 7.1(d)(1). For the reasons stated below, the motion is granted.

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I. BACKGROUND[1]

In June 2019, Defendant Matthew J. Werthe started HSR Wealth Management ("HSR"),[2] a California-registered investment adviser. Mr. Werthe was the sole owner, employee, and Chief Compliance officer of HSR and was solely responsible for all its day-to-day activities. He was in the business of providing investment advice regarding equity stocks, fixed income securities, bonds, exchange traded funds ("ETFs"), mutual funds, and cash equivalent instruments. His clients paid him advisory fees based on a percentage of assets under management. Mr. Werthe had discretionary authority over his clients' brokerage accounts to trade on their behalf without prior permission. As of March 2022, he had over 50 clients and over $12 million in assets under management.

Defendant conducted most of his clients' securities transactions through a block trading account (the "Block Account") at TD Ameritrade ("TDA"). The purpose of a block trading account is to aggregate multiple clients' trades through a large "block" transaction, and subsequently allocate those trades using an average execution price. An investment adviser would abuse block trading if he waited to see whether the stock price rose or fell and allocated the trade based on pre-allocation stock performance rather than the average execution price.

Defendant was solely responsible for placing trades through the Block Account and allocating them between his clients' brokerage accounts ("Client Accounts") and his own brokerage account ("Werthe Account"). TDA was the broker-custodian which held the Werthe and Client Accounts, and through which Defendant executed the trades and allocations.

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[1] Background facts are taken from the joint statement of undisputed facts previously filed with summary judgment briefing. (ECF No. 29.)

[2] Mr. Werthe and HSR are sometimes collectively referred to as Defendant.

In the fall 2021, TDA's data showed that Defendant was engaged in preferentially allocating day-trades to the Werthe Account. On or about September 29, 2021, a TDA representative told Mr. Werthe that he should avoid trading the same security on the same day as his clients to avoid receiving a better price. On or about October 21, 2021, another TDA representative questioned Mr. Werthe about his block trading, account allocations, and inconsistencies between the representations to Defendant's clients and the actual trading practices. The same representative again spoke with Mr. Werthe on March 4, 2022, and confronted him, among other things, about the broken assurance that he would stop allocating day-trades to the Werthe Account and failure to retain allocation records. On or about March 25, 2022, TDA shut down the Block Account and terminated its relationship with HSR due to concerns about trading activity.

The SEC filed this action alleging that Defendant "cherry picked" the trades, *i.e.* disproportionately allocated trades that were profitable at the time of allocation to the Werthe Account and the trades that were unprofitable at the time of allocation to the Client Accounts. The SEC expert and financial economist Rachita Gullapalli, Ph.D., analyzed TDA trading and market data and concluded that Defendant had engaged in cherry picking. The SEC also alleged that Defendant made false or misleading representations to his clients regarding his trading practices.

Based on the foregoing, the SEC alleged five causes of action. In the first cause of action the SEC claims that by cherry picking Defendant engaged in a scheme to defraud his clients and that he engaged in additional deceptive acts by making false and misleading statements. The SEC contends that this conduct constitutes fraud in connection with the purchase or sale of securities in violation of 15 U.S.C. §78j(b) and 17 C.F.R. § 240.10b-5(a) & (c).[3] In the third cause of action the SEC claims that by the

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[3] Title 15 U.S.C. §78j(b) is sometimes referred to as Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Title 17 C.F.R. § 240.10b-5, the regulations

same conduct Defendant also committed fraud in the offer or sale of securities in violation of 15 U.S.C. § 77q(a)(1) and (3).[4] The first and third causes of action are collectively referred to as the "Fraudulent Scheme Claims."

In the second cause of action the SEC claims that by making false statements to his clients, Defendant engaged in fraud in connection with the purchase or sale of securities in violation of 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b). Based on the same false statements, in the fourth cause of action the SEC claims that Defendant also committed fraud in the offer or sale of securities in violation of 15 U.S.C. § 77q(a)(2). The second and fourth causes of action are collectively referred to as the "False Statement Claims."

In the fifth cause of action the SEC claims that by cherry picking and making false and misleading statements, Defendant breached his fiduciary duty to his clients. The SEC contends that this conduct constitutes fraud by an investment adviser in violation of 15 U.S.C. §80b-6(1) and (2)[5] (the "Investment Adviser Claim").

The SEC had previously filed a summary judgment motion which the Court granted insofar as the Court found that no genuine issue of material fact existed as to Defendant's liability on all claims. (ECF No. 32, "MSJ Order.") The issue of remedies was not raised at summary judgment and therefore remained unresolved. Pending before the Court is SEC's motion for judgment awarding monetary and injunctive relief.

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promulgated under Section 10(b), are sometimes referred to as Rule 10b-5. They apply to securities buyers and sellers. *Aaron v. SEC,* 446 U.S. 680, 687 (1980).

[4] Title 15 U.S.C. § 77q(a) is sometimes referred to as Section 17(a) of the Securities Act of 1933 ("Securities Act"). It applies only to securities sellers. *Aaron,* 446 U.S. at 687.

[5] Title 15 U.S.C. § 80b-6 is sometimes referred to as Section 206 of the Investment Advisers Act of 1940 ("Advisers Act").

1 **II. DISCUSSION**

2 After granting the SEC's summary judgment motion on the issue of liability, the
3 Court can "weigh facts in determining the appropriate remedy[.]" *SEC v. Barry,* 146
4 F.4th 1242, 1265 (9th Cir. 2025) ("*Barry*"); *see also SEC v. Murphy,* 50 F.4th 832, 848
5 (9th Cir. 2020).

6 The SEC seeks a final judgment for disgorgement of unlawful gains of
7 $507,996.42, prejudgment interest in the sum of $112,340.03, civil penalties in the sum
8 of $507,996.42, and injunctive relief

9 (1) permanently enjoining Defendant from future violations of Section
10 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the
11 Securities Act, and Sections 206(1) and 206(2) of the Advisers Act, by
12 committing or engaging in specified actions or activities relevant to such violations; and

13 (2) permanently enjoining Defendant from participating, directly or
14 indirectly, in the purchase, offer, or sale of any security other than for his
15 own personal account.

16 Plaintiff does not oppose injunctive relief. (*See* ECF No. 37, "Opp'n.") He
17 opposes monetary relief generally arguing that after having been caught, it is much more
18 difficult for him to find employment and housing, and that it will be impossible for him
19 to pay the judgment requested by the SEC.

20 **A. Injunctive Relief**

21 The Securities Act, 15 U.S.C. § 77t(b), the Exchange Act, 15 U.S.C. § 78u(d)(1),
22 and the Advisers Act, 15 U.S.C. §80b-9(d) provide that upon proper showing, a
23 permanent injunction shall be granted in an enforcement action brought by the SEC.
24 Defendant does not oppose the SEC's request for injunctive relief.

25 A permanent injunction "does not follow from success on the merits as a matter of
26 course." *Winter v. Nat'l. Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008); *see SEC v. Fehn*,
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97 F.3d 1276, 1295 (9th Cir. 1996) ("*Fehn*").[6] When, as here, Congress empowers courts to grant injunctive relief, the traditional equitable standard established in *Winter* governs. *See Starbucks v. McKinney*, 602 U.S. 339, 345-46 (2024). Accordingly, the SEC must make a showing regarding (1) its success on the merits; (2) whether irreparable harm will likely result in the absence of the injunction; (3) whether the balance of the equities tips in the SEC's favor, and (4) the public interest. *See Winter*, 555 U.S. at 20.[7]

Here, the SEC has succeeded on the merits of all its claims. (*See* MSJ Order.) The likelihood of irreparable harm can be demonstrated by showing the likelihood of future violations. *See Fehn*, 97 F.3d at 1295; *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980) ("*Murphy*"). In this regard, the Court must "assess the totality of the circumstances surrounding the defendant and his violations," as well as consider factors such as

> (1) the degree of scienter involved; (2) the isolated or recurrent nature of the infraction; (3) the defendant's recognition of the wrongful nature of his conduct; (4) the likelihood, because of defendant's professional occupation, that future violations might occur; (5) and the sincerity of his assurances against future violations.

Fehn, 97 F.3d at 1295-96 (*Murphy* factors). "[T]he existence of past violations may give rise to an inference that there will be future violations." *Fehn,* 97 F.3d at 1295.

On summary judgment, the SEC showed that Defendant deliberately allocated profitable trades to himself rather than his clients, made false statements in his ADV brochures about his trading practices, and misrepresented to his clients the reason for moving to a different trading platform, i.e., he covered up the fact that the broker-custodian TDA closed his account due to concerns about preferential allocation of day

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[6] Unless otherwise noted, internal quotation marks, ellipses, brackets, citations, and footnotes are omitted from citations.

[7] "The standard for a preliminary injunction is essentially the same as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success." *Winter,* 555 U.S. at 32.

trades to his own account. (*See* MSJ Order at 8-17; *see also id.* at 3.) Defendant took some of these deliberate actions even after warnings and notice from third parties, including California Department of Financial Protection and Innovation. (*Id*. at 17-18.) Based on these undisputed facts, the SEC showed that Defendant possessed a high level of scienter. (*See id.* at 16-18.) Furthermore, Defendant engaged in his fraudulent scheme for a sustained period -- at least from May 1, 2021, until TDA closed his account on March 25, 2022. (*Id.* at 8-9.) During this time, he cherry-picked numerous trades amounting to more than $70 million in the aggregate. (*Id.* at 9; *see also* ECF No. 26-21, Gullapalli Report at 6 (19,407 allocations).) Defendant's misconduct was not isolated but recurrent and ended only when TDA closed his account. (*Id.* at 8-9, 14-15.) Defendant has shown no remorse for the preferential treatment of his account at the expense of his clients. In his summary judgment briefing, he maintained he did not know he did anything wrong (*id.* at 18), and to date has made no assurance against further violations. The SEC's undisputed evidence is sufficient to show likelihood of future violations and irreparable harm. *See Fehn*, 97 F.3d at 1295.

Given the deliberate nature and sustained duration of Defendant's fraudulent activities, the SEC seeks to enjoin future violations as well as preclude Defendant from participating in security offering or trading other than for his own account. The Exchange Act provides for "any equitable relief that may be appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5). Based on the undisputed facts of this case, a conduct-based injunction requested by the SEC is warranted.

Finally, the balance of equities favors the SEC, which is seeking to enforce the law and protect investors from Defendant's fraudulent trading practices. For the same reason, the requested injunctive relief is in the public interest. Accordingly, the SEC's request for injunctive relief is granted.

B. Disgorgement

The SEC seeks disgorgement of $507,996.42 from Defendant. The Exchange Act authorizes disgorgement in SEC civil enforcement actions. *SEC v. Sripetch,* 154 F.4th

1 980, 984 & n.2 (9th Cir. 2025) ("*Sripetch*"); *cert. granted* 2026 WL 73091 (Jan. 9, 2026)
2 (citing 15 U.S.C. §§ 78u(d)(3)(A)(ii), (5) & (7)). The SEC may seek, and a district court
3 may order, "disgorgement under paragraph (7) of any unjust enrichment by the person
4 who received such unjust enrichment as a result of such violation." 15 U.S.C.
5 §§ 78u(d)(3)(A)(ii).

6 "Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to
7 deter others from violating securities laws by making violations unprofitable." *SEC v.*
8 *Platforms Wireless Int'l Corp.,* 617 F.3d 1072, 1096 (9th Cir. 2010) ("*Platforms*
9 *Wireless*"). However, it must conform to common-law equity limitations, including that
10 it generally must be returned to the wronged investors and may not exceed defendant's
11 net profits. *See Sripetch,* 154 F.4th at 983-84; *see also Liu v. SEC,* 591 U.S. 71, 87
12 (2020); *see also id. passim* at 79-81, 83-89. Relief must be crafted so that the effect is
13 restitutionary rather than punitive. *Liu*, 591 U.S. at 80, *see also id.* at 82.

14 "The amount of disgorgement should include all gains flowing from the illegal
15 activities." *Platforms Wireless,* 617 F.3d at 1096. It "need be only a reasonable
16 approximation of profits causally connected to the violation." *Id.* Although "[t]he SEC
17 bears the ultimate burden of persuasion" on the issue whether the amount is a reasonable
18 approximation, "[o]nce the SEC establishes a reasonable approximation[,] the burden
19 shifts to the defendant[] to demonstrate" that it is not. *Id*; *see also SEC v. Yang,* 824
20 Fed.Appx. 445 (9th Cir. Aug. 6, 2020).

21 The SEC relies on Dr. Gullapalli's calculations. (ECF No. 36-4, Second Gullapalli
22 Decl. & Ex. A; *see also* MSJ Order at 17; Gullapalli Report; ECF Nos. 26-3, "Gullapalli
23 Decl.") Dr. Gullapalli calculated profits earned between the time of trade and time of
24 allocation. If all trades had been allocated equally across all accounts, all accounts would
25 have suffered a loss of 0.1083%. (Second Gullapalli Decl. & Ex. A.) Based on
26 preferential allocations to his own account, however, Defendant received a gain of
27 1.4153% and his clients received a loss of 1.2669%. (*Id.*) This resulted in Defendant
28 receiving $507,996.42 at the expense of his clients. (*Id.*)

Defendant does not dispute the SEC's analysis or evidence establishing the disgorgement amount. Instead, he argues that the disgorgement amount does not represent his "realized gains" and does not show that his clients suffered any "realized losses." (*See* Opp'n. at 2.) Realized gains and/or losses are not the applicable standard. What matters are Defendant's net profits that are "causally connected" to the violation, *i.e.,* caused by the allocation decision. *See Platforms Wireless,* 617 F.3d at 1096. Accordingly, the relevant gains or losses are measured as of the time of allocation rather than later when the stock is sold, as such gains or losses are caused by subsequent decisions, for example, how long to keep a stock before selling.

Because Defendant's financial hardship is the result of the SEC's discovery of his wrongdoing (*see* Opp'n at 2), and because disgorgement generally must be returned to the wronged investors, *Liu,* 591 U.S. at 87, the Court finds his opposition unpersuasive to defeat the SEC's request.

C. Prejudgment Interest

Next, the SEC seeks prejudgment interest on disgorgement amounting to $112,340.03. The SEC calculated interest from the end of March 2022, when the wrongdoing ceased, to March 12, 2025, the date of the summary judgment order, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax under 26 U.S.C. § 6621(a)(2). (ECF No. 36-2, Lim Decl. ¶ 3 & Ex. A.) Defendant does not oppose either the principal amount, the rate, or the term over which interest was calculated. Because Defendant's financial hardship resulted from the discovery of his wrongdoing, the Court finds it is unavailing to defeat the SEC's request for prejudgment interest.

D. Civil Penalties

Finally, the SEC requests civil penalties in the sum of $507,996.42. Civil penalties "go beyond compensation [and] are intended to punish and label defendants wrongdoers." *Gabelli v. SEC,* 568 U.S. 442, 451-52 (2013). The Securities Act, the Exchange Act, and the Advisers Act each provide for civil penalties as follows:

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(d) Money penalties in civil actions

(1) Authority of Commission
Whenever it shall appear to the Commission that any person has violated any provision of this subchapter … the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty

(A) First tier
The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) [$11,823][8] for a natural person or [$118,225] for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier
Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) [$118,225] for a natural person or [$591,127] for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier
Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) [$236,451] for a natural person or [$1,182,251] for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if--
(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and
(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

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[8] The statutory penalty amounts are adjusted for inflation. 17 C.F.R. § 201.1001(b); https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm.

15 U.S.C. § 77t(d); *see also id.* §§ 78u(d)(3), 80b-9(e).

The amount set forth in each tier applies "for each violation." "District courts have discretion to determine what constitutes a 'violation' and have relied on various proxies, such as the number of investors defrauded, number of fraudulent transactions, [or] number of statutes violated[.]" *Barry,* 146 F.4th at 1266. No matter what proxy is used here, Defendant committed numerous violations as his scheme violated multiple statutes and included 19,407 allocations involving 87 client accounts over at least ten months. (*See* MSJ Order; *see also* Gullapalli Report at 6-7.)

"Courts look to the five *Murphy* factors to guide the determination of a civil penalty award in light of the facts and circumstances of the case." *Barry,* 146 F.4th at 1266. The Court has considered the five *Murphy* factors in the context of injunctive relief. (*See supra* Section II.A.) The application of the *Murphy* factors supports a finding that Defendant's violations involved fraud, deceit, and deliberate disregard of the regulatory requirements. (*See id; see also* MSJ Order at 8-22.) His actions resulted in financial losses to his clients. (*See* Second Gullapalli Decl. & Ex. A.)

The SEC requests $507,996.42 for civil penalties. As determined in relation to the disgorgement amount, this represents Defendant's profits as a result of his violations and can be awarded as civil penalties. *See* 15 U.S.C. §§ 77t(d)(2)(A)(ii), (d)(2)(B)(ii) & (d)(2)(C)(ii). This is not the maximum penalty that could be awarded in a case such as this, involving numerous violations involving fraud, deceit, and deliberate disregard for regulatory requirements resulting in financial losses to Defendant's clients. Although the SEC is seeking penalties under the third tier, which imposes the highest level of penalties, more than the requested amount could be awarded even under the second tier, which imposes $118,225 per violation. Defendant does not dispute that the third tier applies to him but opposes the award based on his financial hardship and inability to pay. The Court finds Defendant's arguments unavailing given the egregiousness, frequency, and persistence of violations as well as the fact that his present circumstances arise from the

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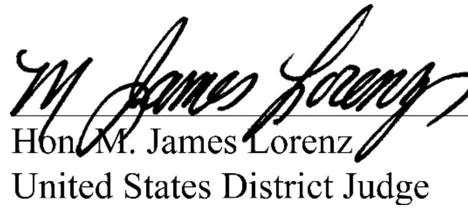
discovery of his wrongdoing. Accordingly, the SEC's request for $507,996.42 in civil penalties is granted.

III. CONCLUSION

For the reasons stated above, the SEC's motion for injunctive and monetary relief is granted.

IT IS SO ORDERED.

Dated: February 2, 2026



Hon. M. James Lorenz
United States District Judge