

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>10/23/2015</u>
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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

JUAN CRUZ BILBAO HORMAECHE, *et*  
*uno*,

Defendants.

No. 14-cv-10036 (RJS)  
ORDER

RICHARD J. SULLIVAN, District Judge:

Plaintiff, the Securities and Exchange Commission, began this action via complaint on December 22, 2014. (Doc. No. 1.) Thereafter, Defendant Juan Cruz Bilbao Hormaeche entered a general appearance in the matter, consented to the Court's jurisdiction over his person and the subject matter of this action, consented to entry of final judgment without admitting or denying the allegations of the complaint (except as to jurisdiction in this matter, which Defendant admitted, and except as to the charges of insider trading in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, all of which Defendant denied), waived findings of fact and conclusions of law, and waived any right to appeal from Final Judgment.

Accordingly, IT IS HEREBY ORDERED THAT the charges against Defendant of violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, are dismissed with prejudice.

IT IS FURTHER ORDERED THAT Defendant is permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from (1) the offering person, (2) the issuer of the securities sought by such tender offer, or (3) any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or
- (b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from (1) the offering person, (2) the issuer of the securities sought by such tender offer, or (3) any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably

foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation, or execution of such tender offer;
- (ii) to the issuer whose securities are sought by such tender offer, to its officers, directors, partners, employees or advisors, or to other persons involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

IT IS FURTHER ORDERED THAT, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following individuals who receive actual notice of this Order Pending 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).

IT IS FURTHER ORDERED THAT the profits gained by Relief Defendant Somerton Resources Limited in the amount of \$6,547,426.00, as a result of the conduct alleged in the complaint, shall be disgorged by Somerton Resources Limited, together with prejudgment interest thereon in the amount of \$198,726.33, and that Defendant is liable for a civil penalty in

the amount of \$6,547,426.00 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. These obligations shall be satisfied by Relief Defendant paying \$6,746,152.33 and by Defendant paying \$6,547,426.00 to the Securities and Exchange Commission not later than 14 days after entry of Final Judgment.

Defendant and Relief Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant and Relief Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter specifying that payment is made pursuant to this order pending final judgment and (1) identifying the case title, civil action number, and name of this Court, and (2) Juan Cruz Bilbao Hormaeche as a defendant in this action.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment and upon entry of final judgment in this matter, Defendant and Relief Defendant relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant or Relief Defendant. The Commission shall send the funds paid pursuant to this order pending final judgment to the United States Treasury. Upon confirmation that Defendant and Relief Defendant have satisfied all payment obligations set forth above, the Commission will



submit to the Court notice that the required payments have been made and request that the Court enter the proposed final judgment and dissolution of asset freeze in the form attached as Exhibit B to the stipulated motion to amend the Court's prior initial and amended orders freezing assets and granting other relief at docket number 49 in this matter.

The Commission may enforce the Court's order and judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of final judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IT IS FURTHER ORDERED THAT, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty, or other amounts due by Defendant under this order pending final judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

Finally, IT IS FURTHER ORDERED THAT this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this order pending final judgment.

SO ORDERED.

Dated:           October 23, 2015  
                  New York, New York

  
RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE