UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-20239, 3-20242

In the Matter of **MICHAEL SEAN MURPHY and JOCELYN MURPHY,** **Respondents.**	**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND IMPOSITION OF SANCTIONS AGAINST RESPONDENTS MICHAEL SEAN MURPHY AND JOCELYN MURPHY**

Pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), the Division of Enforcement ("Division") moves for summary disposition under Rule 250(b) of the Commission's Rules of Practice against Respondents Michael Sean Murphy ("Michael Murphy") and Jocelyn Murphy ("Jocelyn Murphy") (collectively "Respondents") and imposition of sanctions permanently barring Michael Murphy and Jocelyn Murphy from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

I. Procedural Background

A. Underlying Civil Action

On August 14, 2018, the SEC filed a civil enforcement action against Respondents Michael Murphy and Jocelyn Murphy, among others, in the United States District Court for the Southern District of California, captioned *Securities and Exchange Commission v. RMR Asset Management Company, et al.*, Civil Action No. 18-civ-01895. On April 24, 2020, after the close of fact discovery, the SEC filed a motion for summary judgment, which the District Court granted on August 17, 2020. *See* Ex. A.[1] The district court found that, from 2011 to 2017,

[1] In support of this Motion, the Division submits as exhibits the following documents from the Civil Action: the District Court's August 14, 2020 Order Granting Summary Judgment (Ex. A); the District Court's February 2, 2021 Order on Remedies (Ex. B); the February 12, 2021 Final Judgment against Michael Sean Murphy (Ex. C); and the

OS Received 07/16/2021

Respondents Michael Murphy and Jocelyn Murphy both purchased new issue municipal bonds on behalf of and for the account of RMR Asset Management Company ("RMR"). Ex. A at 2. Ralph Riccardi, a co-defendant who settled his claims with the SEC, founded RMR in 1995. *Id.* RMR's primary business was to buy and re-sell municipal bonds and other securities. *Id.* Riccardi enlisted Respondents to open new brokerage accounts to help RMR increase the number of orders it could place for new issue municipal bonds and other securities. *Id.* Respondents purchased the bonds using RMR's capital and received a percentage of profits and losses on their transactions. *Id.*

The District Court found that, from November 2011 to March 2017, Respondent Michael Murphy engaged in 10,179 securities transactions for RMR, including 399 transactions involving new issue municipal bonds. *Id.* The District Court also found that Respondent Jocelyn Murphy engaged in 6,407 transactions for RMR, including 2,410 transactions involving new issue municipal bonds, during the same time period. *Id.* The Court concluded that by engaging in these securities transactions for RMR, Respondents acted as unregistered brokers in violation of Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)]. *Id*. at pp. 4-7. The District Court further concluded that Respondent Jocelyn Murphy provided brokers with false zip codes to obtain purchase priority in jurisdictions who gave first priority on bond orders to retail customers located within the issuers' jurisdiction. *Id.* at 8-10. The court concluded that this constituted fraud in violation of 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]. *Id.*

Among other relief, the District Court permanently enjoined both Respondents from future violations of Section 15(a) of the Exchange Act, and enjoined Jocelyn Murphy from further violations of Section 10b of the Exchange Act and Rule 10b-5 thereunder. *See* Order on

---

February 12, 2021 Final Judgment against Jocelyn Murphy (Ex. D). Pursuant to Commission Rule of Practice 323, 17 C.F.R. § 201.323, the ALJ may take judicial notice of these filings.

OS Received 07/16/2021

Remedies (Ex. B) at 9-10, 13; Final Judgment as to Michael Murphy (Ex. C) ("MSM Final Judgment") at 1-2; Final Judgment as to Jocelyn Murphy (Ex. D) ("JM Final Judgment") at 2-3. The court imposed civil penalties of $419,090.40 against Michael Murphy and civil penalties of $1,761,920 against Jocelyn Murphy. *See* Ex. B at 8, 12, 14; Ex. C at 2; Ex. D at 3.

B. OIP

On March 5 and March 12, 2021, the Commission issued two Orders Instituting Proceedings ("OIP") in this follow-on proceeding against Jocelyn Murphy and Michael Murphy. *See* Securities Exchange Act of 1934 Rel. No. 91270 (March 5, 2021) (Jocelyn Murphy), Securities Exchange Act of 1934 Rel. No. 91310 (March 12, 2021) (Michael Murphy). Respondents answered the OIPs on April 5, 2021. *See* April 6, 2021 Answer to OIP by Respondent Michael Sean Murphy ("MSM Answer"); April 6, 2021 Answer to OIP by Respondent Jocelyn Murphy ("JM Answer"). In their answers, Respondents admit that the District Court granted the Commission's motion for summary judgment against Respondents on August 17, 2020. *See* MSM Answer ¶ 4; JM Answer ¶ 4. Respondents also admit the District Court entered final judgments against Respondents on February 12, 2021, while noting they filed a notice of appeal. *See* MSM Answer ¶ 5; JM Answer ¶ 5. At Respondent's unopposed request, on May 7, 2021, the Commission consolidated these separate administrative proceedings. Securities Exchange Act of 1934 Rel. No. 91797 (May 7, 2021).

II. <u>Argument</u>

Section 15(b)(4)(C) of the Exchange Act authorizes the Commission to impose a collateral bar where a broker or dealer, or any person associated with the broker or dealer, has been enjoined by a court of competent jurisdiction from acting as a broker or dealer, if such a bar would be in the public interest. 15 U.S.C. § 78o(b)(4)(C). This motion for summary disposition is appropriate because Respondents have been permanently enjoined from violating Section 15(a) of the Exchange Act for acting as unregistered broker dealers, Jocelyn Murphy has been

OS Received 07/16/2021

permanently enjoined from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder for fraudulently obtaining new issue bonds, and it is in the public interest to impose a collateral industry bar. *See* Order on Remedies (Ex. B) at 9-10, 13; MSM Final Judgment (Ex. C) at 1-2; JM Final Judgment (Ex. D) at 2-3.

A. Standard for Summary Disposition

Rule 250(b) of the Commission's Rules of Practice provides that after a respondent files an answer and documents have been made available for inspection and copying, a party may move for summary disposition on any or all of its claims. *See* 17 C.F.R. § 201.250(b). The motion may be granted if there is no genuine issue with regard to any material fact and the moving party is entitled to summary disposition as a matter of law. *Id*.

The Commission has repeatedly upheld the use of summary disposition in cases such as this, where courts have enjoined respondents and the sole determination concerns the appropriate sanction. *See, e.g., Gary M. Kornman*, Exchange Act Release No. 59403, (Feb. 13, 2009), 2009 WL 367635 at *10 & n. 58, *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (collecting cases). Under Commission precedent, it is "rare" that summary disposition in a follow-on proceeding involving fraud is not appropriate. *Efim Aksanov*, Initial Dec. Rel. No. 1000, (Apr. 12, 2016), 2016 WL 1444454 at *2 (citing *John S. Brownson*, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *pet. denied*, 66 F. App'x 687 (9th Cir. 2003)).

Further, it is inappropriate in a follow-on proceeding to revisit the factual basis for or legal challenges to a district court's order, and any such challenge does not create a genuine issue of fact before the Commission. *See Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1109-11 (D.C. Cir. 1988). Thus, the Commission does not permit a respondent to re-litigate issues previously addressed in a civil proceeding, including a proceeding in which the court entered an injunction. *See James E. Franklin*, Exchange Act Release No. 56649, (Oct. 12, 2007), 2007 WL 2974200 at *4.

OS Received 07/16/2021

B. Michel Murphy and Jocelyn Murphy are subject to permanent injunctions for violating the Exchange Act

The U.S. District Court for the Southern District of California granted summary judgment against Respondents, finding that both Jocelyn Murphy and Michael Murphy acted as unregistered broker-dealers in violation of Section 15(a) of the Exchange Act, and Jocelyn Murphy fraudulently obtained new issue bonds in violation of Section 10b of the Exchange Act and Rule 10b-5 thereunder. *See* Ex. A at pp. 4-5, 6-7, 8-10. On February 12, 2021, the District Court issued a final judgment permanently enjoining Respondents from future violations of Section 15(a) of the Exchange Act and permanently enjoining Jocelyn Murphy from future violations of Section 10b of the Exchange Act and Rule 10b-5 thereunder. *See* MSM Final Judgment (Ex. C) at 1-2; JM Final Judgment (Ex. D) at 2-3. Because the injunction issued by the District Court in the Final Judgment is precisely within the scope of conduct described in Exchange Act Section 15(b)(4)(C) that merits sanctions under Section 15(b)(6), Respondents should be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *See* 15 U.S.C. § 78o(b)(4)(C); 15 U.S.C. § 78o(b)(6).

C. An industry bar is appropriate and in the public interest

The Commission considers the following factors when determining whether sanctions are in the public interest:

- the egregiousness of the respondent's actions;
- the isolated or recurrent nature of the infraction;
- the degree of scienter involved;
- the sincerity of the respondent's assurances against future violations;
- the respondent's recognition of the wrongful nature of his or her conduct; and
- the likelihood that the respondent's occupation will present opportunities for

OS Received 07/16/2021

future violations.

See Vladimir Boris Bugarski, Rel. No. 34-66842, (Apr. 20, 2012), 2012 WL 1377357 at *4 & n.18 (Apr. 20, 2012) (citing *Steadman* v. *SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds;* 450 U.S. 91 (1981)). The Commission also considers the extent to which the sanction will have a deterrent effect. *See Schield Management Company* Exchange Act Rel. No. 53201 (Jan. 31, 2006), 87 SEC Docket 848. The inquiry is a "'flexible one, and no one factor is dispositive."' *Id.* at *14 & n.22 (quoting *In the Matter of David Henry Disraeli,* Exchange Act. Rel. No. 57027, 2007 SEC LEXIS 3015 at *61 (Dec. 21, 2007), *petition denied, Disraeli v. SEC,* 334 F. App'x 334 (D.C. Cir. 2009)). The Commission has imposed collateral bars for Respondents whose underlying violations did not require a finding of scienter. *See, e.g., Mark J. Bryant*, Exchange Act Rel. No. 91531 (Apr. 12, 2021), 2021 WL 1351206 at *5-6 (holding that "egregious and recurrent" violations of Section 15(a) warranted a lifetime bar); *David Howard Welch*, Exchange Act Rel. No. 92267 (June 25, 2021), 2021 WL 2941483 at *4-5 (holding same).

1. An industry bar against Michael Murphy is appropriate and in the public interest

It is appropriate and in the public interest to impose an industry bar against Michael Murphy because his conduct was recurrent and egregious, he continues to deny the wrongfulness of his actions, and his occupation presents opportunities for future violations, despite his assurances to the contrary.

a. Michael Murphy's conduct was recurrent and he continues to deny any wrongdoing

From 2011 to 2017, Michael Murphy engaged in over 10,000 transactions for RMR, receiving a percentage of the proceeds from these transactions. *See* Ex. A at 2. Despite the regularity of his transactions, Michael Murphy never registered as a broker as required under Section 15(a) of the Exchange Act. *Id.* at 4-5, 6-7. Even after the District Court found that he

OS Received 07/16/2021

violated Section 15(a) of the Exchange Act by acting as an unregistered broker-dealer, Michael Murphy continues to dispute any wrongdoing, stating "… I do not understand why my business arrangement with Mr. Riccardi and RMR required me to register as a broker-dealer[.]" *See* Order on Remedies (Ex. B) at 6-7 (quoting from Michael Murphy's remedies response brief). Given the number of transactions Michael Murphy engaged in over an almost six year period, paired with his failure to recognize that he acted wrongfully, an industry bar against Michael Murphy is appropriate and in the public interest.

b. Michael Murphy's occupation presents opportunities for future violations despite his assurances against future wrongdoing

Michael Murphy is a sophisticated investor and securities trader and he continues to conduct a securities trading business. *See* Order on Remedies (Ex. B) at 7. The business is funded by trading profits and capital that he claims comes from his wife's family. *Id.* Michael Murphy states that he did not intend to violate federal securities laws, and he "will do everything possible to make sure no one can accuse [him] of such a violation again." *Id.* at 7-8. However, Michael Murphy's failure to recognize that he acted wrongfully by engaging in the transactions for RMR and not registering as a broker-dealer weakens this assurance. Moreover, "[t]he likelihood of future illegal conduct is 'strongly suggested' by past illegal activity." *SEC v. Am. Bd. of Trade,* 750 F. Supp. 100, 104 (S.D.N.Y. 1990).

Michael Murphy made regular transactions as an unregistered broker, he is unwilling to admit wrongdoing, and his occupation presents opportunities for future violations of federal securities laws. The Commission has often emphasized that the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346 at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur*

OS Received 07/16/2021

Lipper Corp., Exchange Act Release No. 11773, 1975 SEC LEXIS 527 at *52 (Oct. 24, 1975). Weighed against these standards, it is in the public interest to permanently bar Michael Murphy from the securities industry. *See, e.g., In the Matter of Paul D. Crawford*, AP File No. 3-17043, (Apr. 18, 2016), 2016 WL 1554845 at *4-6 (ALJ granting summary disposition in a follow on proceeding from a violation of Section 15(a) and permanently barring respondent from the industry).

2. An industry bar against Jocelyn Murphy is appropriate and in the public interest

It is appropriate and in the public interest to impose an industry bar against Jocelyn Murphy because her conduct was egregious, recurrent, and providing brokers with false zip codes involved a high level of scienter. Jocelyn Murphy also repeatedly denied the wrongfulness of her actions, and there is a likelihood that she may violate the securities laws again in the future. All of these factors support barring Jocelyn Murphy from the securities industry.

a. Jocelyn Murphy's conduct was egregious, recurrent, and involved a high level of scienter

Jocelyn Murphy knowingly provided false zip codes at least 21 times to obtain municipal bonds, and she was aware that doing so would give her first priority over other investors. *See* Order on Remedies (Ex. B) at 10-11. The District Court held that Jocelyn Murphy's actions violated Section 10(b) of the Exchange Act, and that Jocelyn Murphy's conduct established a high level of scienter. *Id.* at 11. The Commission has stated that "conduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions." *Chris G. Gunderson,* Release No. 34-61234, (Dec. 23, 2009), 2009 WL 4981617 at *5 (internal citation omitted).

While providing false zip codes in violation of Section 10(b) of the Exchange Act alone suggests that a permanent industry bar is appropriate, Jocelyn Murphy also acted as an unregistered broker in violation of Section 15(a) of the Exchange Act for nearly six years,

OS Received 07/16/2021

executing over 6,000 transactions for RMR between 2011 and 2017. *See* Order Granting Summary Judgment (Ex. A) at 2; Order on Remedies (Ex. B) at 11. Jocelyn Murphy's recurrent and knowing violation of federal securities laws demonstrates her unfitness for the securities industries.

As stated previously, the Commission has emphasized that the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346 at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527 at *52 (Oct. 24, 1975). An industry bar against Jocelyn Murphy is in the public interest because by repeatedly providing false zip codes to brokers for her own gain while also executing thousands of securities transactions as an unregistered broker, Jocelyn Murphy's conduct was egregious, recurrent, and it involved a high level of scienter, making it appropriate impose a permanent bar against her.

b. Jocelyn Murphy repeatedly denied the wrongful nature of her conduct

As the District Court noted, throughout the litigation Jocelyn Murphy maintained that there was nothing wrong with providing brokers with false zip codes to gain priority over other investors. *See* Order on Remedies (Ex. B) at 11. While she now admits that she "fully understand[s] that even misrepresentations that seem small at the time can never be justified," it is still in the public interest to bar her from the securities industry because of her egregious and recurrent conduct. *Id.*

c. Jocelyn Murphy's assurances are insufficient. A bar is necessary to prevent future violations of the law.

Jocelyn Murphy claims that she does not intend to open securities accounts in the future, that she will not provide false information to anyone in connection with a securities transaction,

OS Received 07/16/2021

and that she will ensure no one can accuse her of violating federal securities laws. *See* Order on Remedies (Ex. B) at 12. Despite these claims, Jocelyn Murphy has also indicated that she may change her mind in regards to opening securities accounts, depending on whether her "personal circumstances change" and whether "it makes financial sense for [her] to attempt to open a securities brokerage account." *Id.* Additionally, as explained above, Jocelyn Murphy's husband, Michael Murphy, continues to engage in securities transactions using capital from Jocelyn Murphy's family. *Id.* The District Court found that Jocelyn Murphy's contradictory statements about her future in the securities industry, coupled with her family's ongoing involvement in it, signaled a likelihood that she may start professionally trading again in the future and that additional violations of securities laws may occur. *Id.* An industry bar against Jocelyn Murphy is appropriate because when, as here, the misconduct involves fraud, it is in the public interest "to be mindful of the fact that the securities industry is one in which opportunities for dishonesty recur constantly [which] necessitates specialized legal treatment." *Richard C. Spangler, Inc.,* 46 S.E.C. 238, 252 (1976) (internal footnotes omitted).

D. A bar against Respondents will have a deterrent effect

The Commission must consider whether the sanction will have a deterrent effect. *See Schield Management Company,* Admin. Proc. File No. 3-11762, 87 SEC Docket 695, (Jan. 31, 2006), 2006 WL 231642 at *8 n.46; *Ahmed Mohamed Soliman,* Admin. Proc. File No. 3-7954, 58 SEC 249, (Apr. 17, 1995), 1995 WL 237220 at *3 (stating that the selection of an appropriate sanction involves consideration of several elements, including deterrence). *Steadman v. SEC*, 603 F.2d 1126, 1142 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (in ruling on an appeal of review of an ALJ's decision, the Fifth Circuit stated that "the Commission may consider the likely deterrent effect its sanctions will have on others in the industry."). Industry bars have long been considered effective deterrence. *See, e.g.*, *Monetta Fin. Servs., Inc.,* Admin. Proc. File No. 3-9546, 86 SEC Docket 1071, (Oct. 4, 2005), 2005 WL 2453949 at *3; *Lester*

OS Received 07/16/2021

Kuznetz, Admin. Proc. File No. 3-6356, 36 SEC Docket 332, (Aug. 12, 1986), 1986 WL 625417 at *3 (noting that the sanction of a bar "serves the purpose of general deterrence"). In light of these considerations, these sanctions against the Respondents are warranted not only to protect the public from harm but also to act "as a deterrent to others" by demonstrating the consequences of violating the federal securities laws. *Schield Management Company, Id.*, 2006 WL 231642 at *11. An industry bar in this case will adequately reflect the gravity of the wrongful conduct and reinforce the message that there is no place for actors like Michael Murphy and Jocelyn Murphy in the securities industry.

III. **Conclusion**

For the reasons stated above, the Division respectfully submits that the evidentiary record shows that Respondents Michael Murphy and Jocelyn Murphy violated the registration provisions of the Exchange Act, Respondent Jocelyn Murphy violated the antifraud provision of the Exchange Act, and it is in the public interest that they be barred from the industry. An injunction against a scheme involving dishonesty requires a bar, and because of the Commission's obligation to maintain honest securities markets, an industry-wide bar is appropriate.[2]

Dated: July 16, 2021

Respectfully submitted,

/s/ James E. Smith
Christian D. H. Schultz
James E. Smith
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549
(202) 551-5881 (Smith)
schultzc@sec.gov
smithja@sec.gov
COUNSEL FOR
DIVISION OF ENFORCEMENT

[2] Counsel for the Division wishes to thank Law Student Intern, Anna Goodnight, for her invaluable assistance in the research and writing of this motion.

OS Received 07/16/2021

CERTIFICATE OF SERVICE

I certify that on July 16, 2021, I served a true and correct copy of the foregoing document on Respondents by email to the following counsel of record for Respondents Michael Murphy and Jocelyn Murphy:

Robert Knuts
Sher Tremonte LLP
90 Broad Street, 23rd Floor
New York, New York 10004
tel: 212.202.2600
direct: 212.202.2638
fax: 212.202.4156
rknuts@shertremonte.com

/s/ James E. Smith
James E. Smith

OS Received 07/16/2021

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-20239, 3-20242

In the Matter of **MICHAEL SEAN MURPHY and JOCELYN MURPHY,** **Respondents.**	**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND IMPOSITION OF SANCTIONS AGAINST RESPONDENTS MICHAEL SEAN MURPHY AND JOCELYN MURPHY**

DIVISION OF ENFORCEMENT'S INDEX OF ATTACHMENTS

Attachment	**Description**
Exhibit A	**Order Granting Motion for Summary Judgment**
Exhibit B	**Order on Remedies**
Exhibit C	**Final Judgment as to Michael Sean Murphy**
Exhibit D	**Final Judgment as to Jocelyn Murphy**

OS Received 07/16/2021

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

RMR ASSET MANAGEMENT COMPANY, et al.,
Defendants.

Case No.: 18-CV-1895-AJB-LL

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST RICHARD GOUNAUD, MICHAEL SEAN MURPHY, AND JOCELYN MURPHY

(Doc. Nos. 115, 133)

Presently before the Court is Plaintiff's motion for summary judgment against Richard Gounaud, Michael Sean Murphy, and Jocelyn Murphy. (Doc. No. 115.) Defendant Richard Gounaud opposes this motion. (Doc. No. 122.) Defendants Michael Sean Murphy and Jocelyn Murphy also oppose this motion. (Doc. No. 123.) The Court held a hearing on Plaintiff's motion for summary judgment on July 23, 2020. For the reasons set forth more clearly below, the Court **GRANTS** Plaintiff's motion for summary judgment.

OS Received 07/16/2021

BACKGROUND

Ralph Riccardi founded RMR in 1995 and its primary business was to buy and re-sell municipal bonds and other securities. (Doc. No. 115-1 at 10.) Defendants were enlisted by Riccardi to open new brokerage accounts to help RMR increase the number of orders it could place for new issue municipal bonds and other securities. (*Id.*) Riccardi directed Defendants to trade for RMR. (*Id.*)

Jocelyn Murphy engaged in 6,407 securities transactions for RMR, including 2,410 transactions involving new issue municipal bonds, between November 28, 2011 and June 29, 2017. (*Id.* at 14.) Michael Murphy engaged in 10,179 securities transactions for RMR, including 399 transactions involving new issue bonds, between November 28, 2011 and March 10, 2017. (*Id.*) Richard Gounaud engaged in 2,250 securities transactions for RMR, including 360 transactions involving new issue municipal bonds, between August 14, 2013 and May 4, 2017. (*Id.*) Each Defendant received a percentage of the profits and losses. (Doc. No. 122 at 4; Doc. No. 123 at 15, 17.)

Furthermore, Jocelyn Murphy provided brokers with a zip code to submit to the underwriters with her orders. (Doc. No. 115-1 at 15.) Ms. Murphy understood that retail orders, as listed in priority of orders, were reserved for individual investors with zip codes in the issuer's jurisdiction. (*Id.*) Ms. Murphy also understood that if she submitted her Colorado zip code with an order for bonds issued outside of Colorado where the issuer had reserved the highest priority for in-state residents, her order would not qualify for the highest retail priority. (*Id.*) Therefore, Ms. Murphy would provide zip code corresponding to the jurisdictions she was seeking an order of bonds from, despite the fact that she did not reside in these jurisdictions. (*Id.* at 16.)

LEGAL STANDARD

Summary judgment is appropriate under Federal Rule of Civil Procedure 56 if the moving party demonstrates the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law, it could affect the outcome of the

OS Received 07/16/2021

case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party. *Id.*

A party seeking summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. The moving party can satisfy this burden in two ways: (1) by presenting evidence that negates an essential element of the nonmoving party's case; or (2) by demonstrating the nonmoving party failed to establish an essential element of the nonmoving party's case on which the nonmoving party bears the burden of proving at trial. *Id.* at 322–23. "Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to set forth facts showing a genuine issue of a disputed fact remains. *Celotex Corp.*, 477 U.S. at 330. When ruling on a summary judgment motion, a court must view all inferences drawn from the underlying facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

DISCUSSION

Plaintiff bases its motion for summary judgment on two main arguments. The first argument is that Defendants acted as unregistered broker-dealers in violation of Section 15(a) of the Exchange Act. The second argument is that Jocelyn Murphy fraudulently obtained new issue bonds in violation of Section 10(b) and Rule 10b-5. The Court will address each argument in turn.

A. Section 15(a) of the Exchange Act

Section 15(a) of the Exchange Act makes it unlawful for a broker or dealer "to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless the broker or dealer is registered with the SEC in accordance with Section 15(b). Section 3(a)(4)(A) of the Exchange Act defines a "broker" as "any person engaged in the

1 business of effecting transactions in securities for the account of others." 15 U.S.C. §
2 78c(a)(4)(A).
3 The Ninth Circuit applies conduct-based factors and a "totality of the circumstances
4 approach" to determine whether a person has engaged in the business of being a broker.
5 *See SEC v. Feng*, 935 F.3d 721, 731 (9th Cir. 2019). The *Hansen* court identified the
6 following six factors as relevant to determining whether a person met the definition of
7 "broker": (1) is an employee of the issuer; (2) received commissions as opposed to a salary;
8 (3) is selling, previously sold, the securities of other issuers; (4) is involved in negotiations
9 between the issuer and the investor; (5) makes valuations as to the merits of investment or
10 gives advice; and (6) is an active rather than passive finder of investors. *See SEC v. Hansen*,
11 No. 83 Civ. 3692 (LPG), 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984).
12 First, Plaintiff argues that Defendants acted as unregistered brokers because they
13 effected securities transactions for RMR in return for transaction-based compensation.
14 (Doc. No. 115-1 at 20.) "'The most important factor in determining whether an individual
15 or entity is a broker' is the 'regularity of participation in securities transactions at key points
16 in the chain of distribution.'" *SEC v. Holcom*, No. 12-cv-1623, 2015 WL 11233426, at *4
17 (S.D. Cal. Jan. 8, 2012) (quoting *SEC v. Bravata*, No. 09-12950, 2009 WL 2245649, at *2
18 (E.D. Mich. July 27, 2009)). Defendants admit that Riccardi and RMR directed Defendants
19 to link their brokerage accounts to RMR's prime broker account so Defendants could use
20 RMR's capital to purchase new issue municipal bonds and other securities. (*See* Riccardi
21 Depo. at 32:8–33:10; 160:10–11; J. Murphy Depo. at 17:11–18:15; 41:19–42:12; 112:8–
22 113:11; M. Murphy Depo. at 50:1–17; 65:21–66:1; Gounaud Depo. at 64:17–23; 82:2–12;
23 100:25–101:19.) Defendants controlled their accounts; however, they conducted their
24 trading activity on behalf of RMR through RMR's prime brokerage account. (*See id.*)
25 Riccardi and RMR funded the prime broker account. (Riccardi Depo. at 164:2–6.)
26 Defendants Michael Murphy and Jocelyn Murphy argue that they did not engage in
27 securities transactions "for" Riccardi. (Doc. No. 123 at 25.) They assert that simply
28 because Riccardi provided the capital does not transform those transactions into trades

1 "for" Riccardi. (*Id.*) Defendant Gounaud argues that a portion of the capital of RMR's
2 prime brokerage account belonged to him. (Doc. No. 122 at 4.) However, there are several
3 exhibits that contain emails establishing that Riccardi and RMR directed Defendants to
4 purchase securities. (Doc. Nos. 125-9; 125-10; 125-11; 125-12.) Further, Defendant
5 Jocelyn Murphy admitted in her deposition that she had never traded municipal securities
6 before working with RMR, and Riccardi trained her at his office on how to trade for RMR.
7 (J. Murphy Depo. at 44–46.) Furthermore, Defendant Gounaud provides no evidence that
8 a portion of the capital of RMR's prime brokerage account belonged to him, and he
9 admitted that he received compensation via RMR's prime brokerage account only if trades
10 created profits in a given time period. (Gounaud Depo. at 190:19–23.) It is undisputed that
11 Defendants engaged in a large amount of frequent transactions. Accordingly, it is
12 undisputed that Defendants engaged in regularity of participation in securities transactions
13 and, based on the above, it was for RMR.
14 Defendants also argue that they were in a "partnership" with Riccardi. (Doc. No. 122
15 at 4; Doc. No. 123 at 12, 14–17.) However, Defendants provide no evidence of this other
16 than self-serving declarations. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993)
17 ("When the nonmoving party relies only on its own affidavits to oppose summary
18 judgment, it cannot rely on conclusory allegations unsupported by factual data to create an
19 issue of material fact.")
20 In 2016, Defendant Gounaud provided responses to an SEC investigative
21 questionnaire. Defendant Gounaud stated that he worked for himself and was associated
22 with Riccardi, but did not identify any partnership with Riccardi or RMR. (Doc. No. 125-
23 3 at 7.) Further, Defendant Gounaud admitted that RMR gave him an IRS Form 1099,
24 which is for self-employed independent contractors. (Gounaud Depo. at 219:10–21.)
25 During the hearing on this matter, the Court permitted Defendant Gounaud to supply the
26 Court with the IRS Form 1099. Defendant Gounaud provided the IRS Form 1099 to the
27 Court along with a supplemental motion. (Doc. No. 134.) Defendant Gounaud should have
28 sought leave of the Court prior to filing a supplemental motion that is essentially a sur-

reply. *See* Judge Battaglia Civil Case Procedures II.E. However, Defendant Gounaud was given the opportunity to present these arguments at the hearing on this matter, so the Court will briefly address these arguments. The IRS Form 1099 issued to Defendant Gounaud states that the income he received is miscellaneous income. However, this does not change the Court's analysis. Defendant Gounaud was not issued an IRS Schedule K-1 or any other record to establish a partnership. Defendant Gounaud argues that RMR elected out of Subchapter K, but there is no evidence that his relationship with RMR was an investment partnership under 26 CFR § 1.761-2(a)(2). Defendant Gounaud further admits that his partnership with RMR never filed a Form 1065 electing out of a Subchapter K, and does not offer any evidence of an agreement among the members that the organization would be excluded from Subchapter K. Defendant Gounaud also argues that he did not identify his relationship with Riccardi and RMR in response to SEC investigative questionnaire because it was the focus of the investigation. However, again, Defendant Gounaud has not provided anything to rebut the evidence that his relationship with Riccardi and RMR was as an independent contractor. Lastly, Defendant Gounaud argues that an eight-factor test in *Holdner v. Com'r*, 100 T.C.M. (CCH) 108 (T.C. 2010), *aff'd*, 483 F. App'x 383 (9th Cir. 2012) (quoting *Luna v. Commissioner*, 42 T.C. 1067, 1077–78, 1964 WL 1259 (1964)) establishes the existence of a partnership. However, Defendant Gounaud presents no evidence or argument as to how these factors establish a partnership in this case.

Defendants Jocelyn and Michael Murphy also responded to the 2016 SEC questionnaire as self-employed and failed to identify any partnership with Riccardi or RMR in their responses to an SEC investigative questionnaire. (Doc. No. 125-5 at 5; Doc. No. 125-6 at 5.) Defendant Jocelyn Murphy also testified that she nor Defendant Michael Murphy received an IRS Schedule K-1 from Riccardi or RMR. (J. Murphy Depo. at 56:11–13; 79:10–80:14.) Furthermore, Riccardi testified that he never "perceived [Defendants] as anything other than independent contractors." (Riccardi Depo. at 167:6–8.) Thus, there is overwhelming evidence that Defendants' relationship with RMR was not a partnership, and there is no evidence other than self-serving declarations of Defendants to support that

OS Received 07/16/2021

1 this relationship was a partnership.

2 Second, Plaintiff argues that each of the Defendants received transaction-based
3 compensation for their trading activities on behalf of RMR. (Doc. No. 115-1 at 22.)
4 Defendants argue that they did not receive transaction-based compensation, but rather were
5 paid based on a percentage of net profits. (Doc. No. 122 at 10–13; Doc. No. 123 at 26–27.)
6 Further, Defendants admitted that if they failed to complete a profitable trade in a
7 measuring time period, they received no payments for this activity. (Doc. No. 125 at 8; J.
8 Murphy Depo. at 186:9–25; M. Murphy Depo. at 139:10–14; Gounaud Depo. at 190:19–
9 23.) The Court is not persuaded by Defendants' argument that this form of compensation
10 is different than transaction-based compensation.

11 The parties briefly mention the other factors. Plaintiff asserts that Defendants'
12 conduct satisfies several of these additional *Hansen* factors, as none of the Defendants were
13 employed by any issuer, they all sold securities of issuers, and Defendant Jocelyn Murphy
14 actively located investors to purchase securities sold by RMR. (Doc. No. 115-1 at 18.)
15 Defendants do not dispute that were not employed by an issuer. (Doc. No. 122 at 9; Doc.
16 No. 123 at 23.) However, Defendants do dispute selling securities of issuers and that
17 Defendant Jocelyn Murphy actively located investors to purchase securities sold by RMR.
18 (Doc. No. 122 at 10; Doc. No. 123 at 24.) There are at least two emails where Defendant
19 Jocelyn Murphy is actively locating investors to purchase securities sold by RMR. (Doc.
20 Nos. 115-17; 115-35.) Based on the totality of the circumstances, there is no question of
21 material fact and as a matter of law Defendants were brokers as defined by Section
22 3(a)(4)(A) of the Exchange Act. There is no dispute that Defendants did not register as
23 brokers as required by Section 15(a) of the Exchange Act.

24 B. Section 10(b) of the Exchange Act and Rule 10b-5

25 Section 10(b) of the Exchange Act and Rule 10b-5 prohibits fraud in connection with
26 the purchase or sale of any security. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; *SEC v.*
27 *Dain Rauscher, Inc.*, 254 F.3d 852, 855 (9th Cir. 2001). To prove a violation of Section
28 10(b) and Rule 10b-5, the SEC must show: (1) a material misstatement or deceptive

conduct; (2) in connection with the purchase or sale of security; (3) using interstate commerce; and (4) with scienter. *See SEC v. Phan*, 500 F.3d 895, 907–08 (9th Cir. 2007); *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1092 (9th Cir. 2010); *see also SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1364 (9th Cir. 1993).

First, Plaintiff argues that Defendant Jocelyn Murphy made material misrepresentations when providing false zip codes to brokers. (Doc. No. 115-1 at 24.) The Supreme Court has held that "materiality depends on the significance the reasonable investor would place on the withheld or misrepresented information." *Basic, Inc. v. Levinson*, 485 U.S. 224, 240 (1988). Defendant Jocelyn Murphy falsely provided Oregon, Puerto Rico, and California zip codes when she sought to obtain bonds from those jurisdictions. She submitted more than one false zip code via different brokers for the bonds being offered by issuers in Oregon and California.

MSRB Rules G-11 and G-17 require underwriters to allocate the new issue bonds in accordance with the priorities set by the issuer, and to make sure any orders submitted during a retail order period meet the issuer's conditions. Defendant Jocelyn Murphy admitted that the first priority bonds that she sought and obtained from California and Oregon were "California Retail" and "Oregon Retail." (Doc. No. 123 at 17.) Defendant Jocelyn Murphy also admitted that without providing these false zip codes, she would not have been in the retail order period, and thus, would not have received the highest priority. (J. Murphy Depo. at 99:23–100:5; 128:3–17; 159:18–160:3; 163:18–164:3.) Furthermore, Plaintiff has provided unrebutted expert testimony that local zip codes are important to issuers of new municipal bonds. (Doc. No. 115-4 at 17.)

Defendant Jocelyn Murphy asserts that there is no evidence that any other investor who sought to purchase those bonds did not receive an allocation for the relevant bonds. (Doc. No. 123 at 29.) Defendant Jocelyn Murphy further argues that there is no evidence that the SEC-registered broker-dealers who received the false zip code information communicated that information to anyone else. (*Id.* at 28.) However, as explained above, Defendant Jocelyn Murphy herself stated that she would not have been in the retail order

OS Received 07/16/2021

period without providing these false zip codes. Accordingly, based on Defendant Jocelyn Murphy's own admissions and Plaintiff's expert testimony, providing false zip codes was a material misrepresentation in order to obtain priority in obtaining bonds.

Section 10(b) and Rule 10b-5 require a showing of scienter, which courts define as a "mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). In the Ninth Circuit, the SEC may establish scienter by a showing of either actual knowledge or recklessness. *Gebhart v. SEC*, 595 F.3d 1034, 1040 (9th Cir. 2010).

Plaintiff asserts that Defendant Jocelyn Murphy acted with scienter when she submitted materially false zip codes with her orders for bonds offered by issuers located in Oregon, California, and elsewhere. (Doc. No. 115-1 at 26.) Defendant Jocelyn Murphy argues that she did not provide false zip codes with the intent to deceive because the persons whom she communicated that information knew it was erroneous, and she did not know for a fact whether the erroneous zip code would make a difference as to whether or not she received an allocation of new issue bonds. (Doc. No. 123 at 30.) She also asserts that the SEC has offered no evidence that any issuer was deceived by the false zip codes or that any investor was actually harmed. (*Id.* at 28.)

Defendant Jocelyn Murphy knew that she did not reside in these zip codes. (J. Murphy Depo. at 97:13–98:11; 125:5–13; 130:21–131:4; 158:9–23.) Defendant Jocelyn Murphy also admitted she knew failing to provide a zip code from these jurisdictions would not place her in the highest priority period, the retail order period. (J. Murphy Depo. at 99:23–100:5; 128:3–17; 159:18–160:3; 163:18–164:3.) For example, Defendant Jocelyn Murphy specifically testified in her deposition:

> Q: So if you want to be first in line based on the priority of orders and the definition of retail order for this California bond deal, you had to submit a zip code; correct?
> A: Correct.
> Q: And that would be a California zip code; correct?
> A: Yes. Correct.
> Q: If you submitted a Denver zip code, do you believe you would

be considered California retail?
A: No.

(J. Murphy Depo. at 155:16–156:5 (objections omitted)).

Defendant Jocelyn Murphy also provides no evidence that the brokers knew her correct zip code. However, based on her own testimony, Defendant Jocelyn Murphy knew when she provided these brokers with false zip codes her order could be considered in the local retail allocation in jurisdictions where she did not reside. Furthermore, the SEC is not required to prove reliance or actual harm to the issuers or investors. *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1364 (9th Cir. 1993) (SEC not required to prove reliance); *Graham v. SEC*, 222 F.3d 994, 1002 (D.C. Cir. 2000) (SEC not required to prove actual harm to investors) (citing *United States v. Naftalin*, 441 U.S. 786 (1979)); *SEC v. Zouvas*, No. 16-cv-0998-CAB-DHB, 2016 WL 6834028, at *10 (S.D. Cal. Nov. 21, 2016) (same) (citing *Naftalin*). The evidence presented clearly establishes scienter.

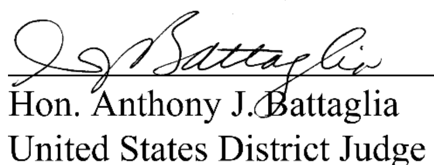
Accordingly, Plaintiff has established that there is no genuine issue of material fact and as a matter of law Defendant Jocelyn Murphy fraudulently obtained new issue bonds in violation of Section 10(b) and Rule 10b-5.

CONCLUSION

Based on the foregoing, the Court **GRANTS** Plaintiff's motion for summary judgment. **Within 45 days** of the date of this Order, Plaintiff's must file a motion regarding the remedies sought in this matter and must call the Court's Chambers to obtain a hearing date upon filing of such motion.

IT IS SO ORDERED.

Dated: August 14, 2020



Hon. Anthony J. Battaglia
United States District Judge

OS Received 07/16/2021

Exhibit B

OS Received 07/16/2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiffs,

v.

RMR ASSET MANAGEMENT COMPANY, et al.,
Defendants.

Case No.: 18-cv-1895-AJB-LL

ORDER GRANTING IN PART AND DENYING IN PART THE SEC'S MOTION FOR REMEDIES

(Doc. No. 138)

Before the Court is a motion for remedies filed by the Security Exchange Commission ("SEC"). (Doc. No. 138.) In its motion, the SEC requests remedies in the form of civil penalties and an injunction against Sean Murphy ("Mr. Murphy"), Jocelyn Murphy ("Ms. Murphy") (collectively, "the Murphys"), and Richard Gounaud ("Mr. Gounaud") (collectively, "Defendants"). For the reasons set forth, the Court **GRANTS IN PART AND DENIES IN PART** the SEC's motion for remedies.

I. BACKGROUND

The SEC commenced this action, alleging that for several years, Defendants violated Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") by acting as unregistered brokers when they bought and sold securities transactions, including

OS Received 07/16/2021

new-issue municipal bonds, on behalf of RMR Asset Management Company ("RMR"). The SEC also alleged that Ms. Murphy violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder when she provided false information regarding her residence, while seeking to purchase new-issue municipal bonds, in order to obtain the highest priority for her orders.

On August 14, 2020, the Court granted the SEC's motion for summary judgment. (Doc. No. 137.) Specifically, the Court held that upon consideration of the relevant factors, Defendants were brokers as defined by Section 3(a)(4)(A) of the Exchange Act, and that there is no dispute that they did not register as brokers as required by Section 15(a) of the same. (*Id.* at 7.) The Court also held that there is no genuine issue of material fact that Ms. Murphy fraudulently obtained new issue bonds in violation of Section 10(b) and Rule 10b-5 by knowingly providing false zip codes to brokers to secure priority in obtaining bonds. (*Id.* at 8–10.) The Court thereafter directed the SEC to file a motion regarding the remedies sought in this matter. The instant motion followed.

II. LEGAL STANDARD

The Exchange Act authorizes the SEC to seek penalties and injunctive relief for violations of the Act. 15 U.S.C. § 78u(d). Civil penalties are "determined by the court in light of the facts and circumstances." *Id.* § 78u(d)(3) (B). The purposes of civil penalties are to punish the violator and deter future violations of the securities laws. *SEC v. Indigenous Global Development Corp.*, 2008 WL 8853722, at *17 (N.D. Cal. June 30, 2008); *SEC v. CMKM Diamonds, Inc.*, 635 F. Supp. 2d 1185, 1192 (D. Nev. 2009). These, in turn, "further the goals of 'encouraging investor confidence, increasing the efficiency of financial markets, and promoting the stability of the securities industry.'" *SEC v. Spyglass Equity Sys.*, Inc., 2012 WL 13008422, at *3 (C.D. Cal. Apr. 5, 2012) (quoting *SEC v. Palmisano*, 135 F.3d 860, 866 (2d Cir. 1998)). Injunctions are appropriate where the SEC has shown a "reasonable likelihood of future violations of the securities laws." *SEC v.*

Fehn, 97 F.3d 1276, 1295 (9th Cir. 1996). "The granting or denying of injunctive relief rests within the sound discretion of the trial court." *Id.* at 1295.

To determine whether to impose civil penalties or an injunction, courts evaluate the totality of the circumstances surrounding the defendant and his or her violations and consider several factors. *See SEC v. Loomis*, 17 F. Supp. 3d 1026, 1029–30 (E.D. Cal. 2014) (citing *SEC v. Fehn*, 97 F.3d 1276, 1295–96 (9th Cir. 1996) and *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980)). Factors to consider are: "(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 (quoting *Murphy*, 626 F.2d at 655).

III. DISCUSSION

In its motion, the SEC requests civil penalties and injunctions against Defendants for their respective violations of the Exchange Act. (Doc. No. 138-1.) The Court discusses the appropriateness of the remedies sought against each defendant in turn.

A. Mr. Gounaud's and Mr. Murphy's Section 15(a) Violations

i. Civil Penalties

The Exchange Act authorizes the Court to impose a monetary penalty against Defendants based upon either (i) specific statutory amounts multiplied by the number of violations committed, or (ii) the gross amount of his or her pecuniary gain. *See* 15 U.S.C. §§ 77t(d)(2), 78u(d)(3). In this case, the SEC seeks Tier 1 penalties against Mr. Gounaud and Mr. Murphy. The statute provides for Tier 1 penalties in an amount that "shall not exceed the greater of" $7,500 per violation (or $9,639 for acts occurring after November 2, 2015) or the gross amount of pecuniary gain to a defendant as a result of the violation. 15 U.S.C. § 78u(d)(3)(b)(i); 17 C.F.R. § 201.1001; 17 C.F.R. § 201.1001, Tbl. I.[1] Of these

[1] This refers to "Table I to 201.1001—Civil Monetary Penalty Inflation Adjustments for Violations From December 10, 1996, Through November 2, 2015."

two statutory alternatives, the SEC requests penalties of $7,500 for each month during which Mr. Gounaud and Mr. Murphy violated Section 15(a).

Because Mr. Gounaud engaged in securities transactions as an unregistered broker from August 14, 2013 to May 4, 2017, a period of forty-six months, the SEC seeks $385,641 in civil penalties against Mr. Gounaud. And because Mr. Murphy engaged in securities transactions as an unregistered broker from November 28, 2011 to March 10, 2017, a period of sixty-five months, the SEC seeks $523,863 against Mr. Murphy. Contesting the appropriateness of the SEC's request, Defendants argue that the penalty amounts are unjust and inequitable when compared to their gross pecuniary gain and the sanctions imposed on other defendants in this action, and violative of the Excessive Fines Clause of the Eight Amendment to the U.S. Constitution. The Court disagrees.

First, there is no requirement that the Court consider the amount of penalties requested against the defendant's gross pecuniary gain. *See SEC v. Brookstreet Sec. Corp.*, 664 F. App'x 654, 656 n.2 (9th Cir. 2016) ("Nothing in the Act requires courts to impose penalties based on a wrongdoer's illicit gain or ability to pay."). The statute itself authorizes the Court to impose *either* a fixed dollar amount for each violation *or* the gross amount pecuniary gain. *See* 15 U.S.C. §§ 77t(d)(2), 78u(d)(3). As the SEC seeks civil penalties based on the fixed statutory amounts, the Court does not find it necessary to have, or consider evidence of, gross pecuniary gain.[2] *See, e.g.*, *SEC v. Wu*, 2017 WL 11518453, at *4 (N.D. Cal. Sept. 20, 2017) ("Because the SEC seeks only the fixed amount in this case, no evidence of [the defendant's] pecuniary gain is required.").

Second, the SEC seeks the same type of sanctions for Mr. Gounaud and Mr. Murphy, similarly situated defendants whom the Court has found to have violated Section 15(a). The Court is not persuaded that Mr. Gounaud's and Mr. Murphy's civil penalties should be measured against those of the other defendants in this action because those defendants

[2] In any event, the record does not contain sufficient information to ascertain each defendant's gross pecuniary gain.

entered into a pre-litigation settlement with the SEC, and thus, are not comparable to Mr. Gounaud and Mr. Murphy. Here, the requested penalties result from a judgment on the merits of the case. In contrast, the settling defendants consented to a final judgment without any finding of liability, and their penalties resulted from a bargained-for exchange. *See also Brookstreet Sec. Corp.*, 664 Fed. App'x at 656 n.2 ("[W]e eschew evaluating penalties in light of awards against other defendants because doing so inappropriately pushes the decision toward a mathematical bright-line.") (citation omitted). The Court further notes that although Defendants are entitled to litigate their case, they did so by presenting arguments without credible evidentiary support. (*See, e.g.*, Doc. No. 137 at 5 ("Defendants also argue that they were in a "partnership" with Riccardi. [] However, Defendants provide no evidence of this other than self-serving declarations.").) As such, the Court does not find that the settling defendants' civil penalty amounts are an appropriate benchmark for ascertaining the penalties appropriate here.

Third, the Court declines to find that the SEC's requested penalties violate the Excessive Fines Clause of the Eight Amendment. Other than conclusory asserting that the requested penalties are grossly disproportional to their violations, Defendants offered no explanation to support their position. (Doc. No. 160 at 24.)[3] As stated in the Court's summary judgment order, Mr. Gounaud and Mr. Murphy engaged in unregistered broker activity for nearly four and six years, respectively. (Doc. No. 137 at 2.) The SEC explains that instead of counting each unlawful transaction that Mr. Gounaud and Mr. Murphy engaged in during those years, it proposes a "per month" calculation. Had the SEC elected a "per violation" calculation, Mr. Gounaud and Mr. Murphy would have been subjected to millions of dollars in penalties as a result of their partaking in thousands of unlawful trades on behalf of RMR. *See, e.g.*, *SEC v. Pattison*, 2011 WL 723600, at *5 (N.D. Cal. Feb. 23, 2011) ("The Court may assess a penalty for each distinct violation[.]"); *SEC v. Amerifirst*

[3] The pinpoint page citations refer to the ECF-generated page numbers at the top of each filing.

Funding, Inc., 2008 WL 1959843, at *9 (N.D. Tex. May 5, 2008) ("[T]he court concludes that it should impose a $2,000 penalty for each investment that defendants received, because each such payment constitutes a separate violation of the securities laws."); *SEC v. Coates*, 137 F. Supp. 2d 413, 428-30 (S.D.N.Y. 2001) (assessing a $10,000 penalty for each of four separate, misleading statements to investors.).

Given the number of securities transactions Mr. Gounaud and Mr. Murphy performed as an unregistered broker and the maximum amount of penalties contemplated by statute and case law, the Court does not find that the SEC's request is excessive. Rather, the Court finds that a "per month" calculation is a reasonable starting place and sufficiently accounts for the long-term nature of Mr. Gounaud's and Mr. Murphy's violations. Having considered Defendants' arguments against the proposed Section 15(a) penalties, the Court applies the aforementioned factor-based test to determine whether to impose the full amount of civil penalties requested or a lesser portion thereof.

a. First Factor

As to the first factor, "the degree of scienter involved," *Murphy*, 626 F.2d at 655, the Court acknowledges that a Section 15(a) violation does not require proof of scienter. This factor therefore weighs in favor of a reduced penalty.

b. Second Factor

Turning to the second factor, "the isolated or recurrent nature of the infraction," *id.*, Other than the Section 15(a) violation, Mr. Gounaud and Mr. Murphy have no prior history of violating the Exchange Act. Thus, the Court finds that this factor weighs in favor of a reduced penalty.

c. Third Factor

The third factor, "the defendant's recognition of the wrongful nature of his conduct," *id.*, Mr. Gounaud has not admitted any wrongdoing. In fact, he states, "I do not believe that I intentionally, wilfully [sic] or negligently violate[d] the Exchange Act 1934 or any Securities and Exchange Commission Rules." (Doc. No. 157 at 1.) Mr. Murphy also has

OS Received 07/16/2021

not recognized the wrongful nature of his conduct and continues to dispute any wrongdoing. (Doc. No. 160-2 at 5 (". . . I do not understand why my business arrangement with Mr. Ricardi and RMR required me to register as a broker-dealer[.]").) As such, the Court finds that Mr. Gounaud's and Mr. Murphy's failure to recognize the wrongfulness of their conduct and accept responsibility weighs in favor of a full penalty. *SEC v. Gowrish*, 2011 WL 2790482, *5 (N.D. Cal. Jul. 14, 2011) ("A person's 'lack of remorse' can be 'apparent in' the person's 'continued insistence on the validity of his' conduct that has been found to be a violation of the Securities and Exchange Act.") (citing *Fehn*, 97 F.3d at 1296).

d. Fourth Factor

Next, the Court turns to the fourth factor, "the likelihood, because of defendant's professional occupation, that future violations might occur." *Murphy*, 626 F.2d at 655. Although Mr. Gounaud is a sophisticated investor and securities trader, he states that since ceasing his business with RMR in 2017, "[h]e has had no activity at all in the securities market since then" and "has no intention of trading securities in the future." (Doc. No. 157 at 14.) On balance, the Court finds this factor weighs in favor of a reduced penalty against Mr. Gounaud.

As to Mr. Murphy, he is also a sophisticated investor and securities trader, and he states in his declaration that he continues to have a securities trading business, funded by capital from his wife's family and trading profits. (Doc. No. 160-2 at 5.) Thus, this factor weighs in favor of a full penalty against Mr. Murphy.

e. Fifth Factor

Moving to the fifth and last factor set forth in *Murphy*, "the sincerity of [the defendant's] assurances against future violations," 626 F.2d at 655, Mr. Gounaud states, "of course the defendant will never violate this or any securities rule again, nor does he intend to be in any position to violate any rule." (Doc. No. 157 at 4.) Similarly, Mr. Murphy attests that "he never intended to violate any provision of the federal securities laws and will do everything possible to make sure no one can ever accuse me of such a violation

again." (Doc. No. 160-2 at 6.) The sincerity of their assurances, however, are weakened in part by their failure to completely recognize the wrongfulness of their past conduct. *See SEC v. Sabrdaran*, 252 F. Supp. 3d 866, 909 (N.D. Cal. 2017) ("Promising to stop doing wrong while denying any wrongdoing is the wrong way to establish that wrongdoing will not reoccur."). However, as the Court has already considered the defendants' equivocation as to the nature of their conduct, the Court considers this factor to be neutral.

Lastly, Defendants assert that in determining the amount of civil penalties to impose, the Court should consider their ability to pay. (Doc. Nos. 157 at 15; 160 at 25.) However, other than self-prepared charts and declarations, Defendants have not submitted any objective supporting documentation to evidence their financial situation.[4] *See, e.g.*, *SEC v. Universal Exp. Inc.*, 646 F. Supp. 2d 552, 565 (S.D.N.Y. 2009) (even if the court considered "ability to pay" in determining remedies, defendant's "self-serving and conclusory assertions" were insufficient to support his claim of financial hardship). *See also Brookstreet Sec. Corp.*, 664 F. App'x at 656 n.2 ("Nothing in the Act requires courts to impose penalties based on a wrongdoer's illicit gain or ability to pay."). Accordingly, the Court does not find this factor influential in its overall analysis.

Based on the foregoing, the Court finds that the balance of factors tips slightly in favor of a reduced penalty for Mr. Gounaud and Mr. Murphy. Thus, the Court exercises its discretion to reduce the SEC's requested civil penalties.[5] Accordingly, the Court finds that $308,512.80 in civil penalties against Mr. Gounaud is appropriate, and that $419,090.40 in civil penalties against Mr. Murphy is appropriate.

---

[4] During the January 21, 2021 motion hearing, the Court raised concerns over the sufficiency of Defendants' financial hardship evidence. None of them explained the deficiency or offered to supplement the record.

[5] The Court notes that it offered the parties an opportunity to present how much the requested penalties should be reduced by, should the Court be inclined to reduce the amount. None of the parties took a specific position on the issue. As the balance of factors do not overwhelmingly favor a reduction, the Court finds that a modest twenty percent reduction is reasonable.

OS Received 07/16/2021

ii. Injunction

In addition, the SEC requests injunctions against Mr. Gounaud and Mr. Murphy, enjoining them from future violations of Section 15(a). (Doc. No. 138-1 at 12.) The SEC also seeks to enjoin them for a period of ten years, from opening or maintaining any brokerage account without providing the brokerage firm a copy of the Complaint and Final Judgment in this case. (*Id.* at 19.) Because whether an injunction is appropriate entails the same factor analysis previously analyzed in the civil penalties section, the Court incorporates its prior analysis herein. However, as the determinative question for purposes on an injunction is whether the SEC has demonstrated a "reasonable likelihood of future violations of the securities laws," *Fehn*, 97 F.3d at 1295, the Court affords special consideration and weight to the likelihood of future violations factor.

Focusing then on the factor of "the likelihood, because of defendant's professional occupation, that future violations might occur," *Murphy*, 626 F.2d at 655, the Court reiterates that Mr. Murphy is a sophisticated investor and securities trader, who continues to operate a securities trading business. *See supra* § III.A.i.d; *see also* (Doc. No. 160-2 at 5). This factor therefore weighs overwhelmingly in favor of an injunction. Consequently, considering the previously analyzed factors and giving due weight to the likelihood of future violations, the Court finds that the SEC has shown a "reasonable likelihood of future violations of the securities laws," *Fehn*, 97 F.3d at 1295. As such, imposing an injunction against Mr. Murphy is appropriate in this case.[6]

For the same reasons, the Court finds that the SEC's request to enjoin Mr. Murphy, for a period of ten years, from opening or maintaining any brokerage account without providing the brokerage firm a copy of the Complaint and Final Judgment in this case, is

[6] The Court disagrees with Defendants' position that the proposed injunction against future Section 15(a) violations is not sufficiently specific to put Defendants on notice of what is prohibited. The Court explained in its summary judgment decision the reasons for how their conduct of engaging in securities transactions on behalf of others without being registered placed them in violation of Section 15(a). This therefore puts Defendants on notice against unregistered trading for others in the future.

OS Received 07/16/2021

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

also appropriate.[7] Given the imposition of civil penalties against Mr. Murphy, however, the Court exercises its discretion to reduce the duration of this injunction to five years. The Court finds this period of time is reasonable under the circumstances and sufficient for the SEC to effectively police future misconduct.[8]

Accordingly, an injunction from future Section 15(a) violations, and the injunction relating to disclosure of this litigation for a period of five years is warranted against Mr. Murphy. *See, e.g.*, *SEC v. Mogler*, 2020 WL 1065865, at *11 (D. Ariz. Mar. 5, 2020) (granting "an injunction against [the defendant] to permanently enjoin him from violating Section 15(a) of the Exchange Act and Section 5 of the Securities Act is appropriate in this case.") As to Mr. Gounaud, he is approaching 70 years old, has no intention of trading securities in the future. Thus, the Court finds that an injunction is not warranted against Mr. Gounaud.

B. Ms. Murphy's Section 15(a), Section 10(b), and Rule 10b-5 Violations

Turning to Ms. Murphy, the SEC seeks $1,761,920 in Tier 2 fraud civil penalties against her for violating Section 10(b) and Rule 10b-5 thereunder. (Doc. No. 138-1 at 11.) Although Ms. Murphy also violated Section 15(a), the SEC does not seek separate monetary penalties for those violations, believing that the requested fraud penalties sufficiently encompass the entirety of her misconduct. (*Id.* at 12.) For violations involving fraud, the statute provides for Tier 2 penalties in an amount that shall not exceed the greater of $80,000 per violation (or $96,384 for acts occurring after November 2, 2015) or the gross pecuniary gain to the defendant. 15 U.S.C. § 78u(d)(3)(b)(ii). Because the Court

[7] Moreover, to the extent that Mr. Murphy argues that the SEC's earlier press releases regarding its civil enforcement action against him caused his brokerage firms to believe that he engaged in fraud, as opposed to the failure to register as a broker-dealer, the Court notes that his furnishing of the Complaint and Final Judgment to his current and future broker firms would make the latter clear. (Doc. No. 160-2 at 4–5.)

[8] Contrary to the Defendants' position, the disclosure requirement is not unprecedented or unreasonable, as evidenced by the other defendants in this action consenting to the same injunction. (Doc. No. 138-1 at 14 n.5.)

found that Ms. Murphy "fraudulently obtained new issue bonds in violation of Section 10(b) and Rule 10b-5," the SEC is within its right to request Tier 2 "per violation" fraud penalties for the twenty-one municipal securities offerings in which she fraudulently provided false zip codes. (Doc. No. 137 at 10.) And as the Court previously found, Defendants' arguments that the penalty requested should be measured against the gross pecuniary gain, creates disparity in judgments among the former defendants in this action, and violates the Eight Amendment are unavailing. *See supra* § III.A.i.

Considering the relevant factors in Ms. Murphy's case, *see Murphy*, 626 F.2d at 655, the Court finds that the first factor—degree of scienter—weighs in favor of the SEC's requested penalties. Ms. Murphy knowingly provided false zip codes in municipal offerings, knowing that doing so would secure the highest priority for her orders. (Doc. No. 137 at 9–10.) Knowing is a high degree of scienter.

As to the second factor, "the isolated or recurrent nature of the infraction," *Murphy*, 626 F.2d at 655, Ms. Murphy's material misrepresentation was not an isolated incident. She provided false zip codes in connection with at least twenty-one municipal securities offerings. (Doc. No. 138-3.) She also engaged in unregistered broker activity for nearly six years, performing thousands of securities transactions. Given the number of Ms. Murphy's infractions, the Court finds that this factor weighs in favor of imposing the penalties requested.

Regarding the third factor, the defendant's recognition of the wrongful nature of her conduct, Ms. Murphy wrote in her declaration that she "now fully understand[s] that even misrepresentations that seem small at the time can never be justified." (Doc. No. 160-8 at 4.) However, it is not lost on the Court that throughout this litigation, Ms. Murphy maintained the position that there was nothing wrong about her lying about her zip code to gain priority for municipal bonds. (*Id.* at 3; Doc. No. 137 at 9.) The Court therefore finds this factor to be neutral.

OS Received 07/16/2021

Next is the fourth factor, "the likelihood, because of defendant's professional occupation, that future violations might occur." *Murphy*, 626 F.2d at 655. While Ms. Murphy claims that she has no intention of opening securities trading accounts in the future, she also indicates that she may change her mind depending on whether her "personal circumstances change in the future" and whether "it makes financial sense for [her] to attempt to open a securities brokerage account. (Doc. No. 160-8 at 4.) Moreover, the Murphys have not completely stepped out of the securities business as Mr. Murphy continues to engage in securities transactions using capital from Ms. Murphy's family. Ms. Murphy's equivocation regarding her future in the securities business coupled with her family's continued involvement in it, signals to the Court a likelihood that Ms. Murphy may renew her professional trading and that future violations might occur. As such, the Court finds that this factor weighs in favor of the requested penalties.

Moving to the final factor set forth in *Murphy*, "the sincerity of [the defendant's] assurances against future violations," 626 F.2d at 655, Ms. Murphy states in her declaration that she will never again provide false information to anyone in connection with any future securities transactions and will ensure that no one can accuse her of violating federal securities law. (Doc. No. 160-8 at 5.) However, given Ms. Murphy's less-than-full appreciation of the wrongfulness of her conduct, the Court finds this factor to be neutral.

Lastly, the Court reiterates that because Defendants have not substantiated their claims of financial hardship with any objective evidence, the Court does not find their bald assertions of inability to pay to be consequential to its analysis. The relevant factors therefore weigh in favor of imposing the full penalty. Thus, in light of the foregoing and the seriousness of Ms. Murphy's violation, the Court finds that imposing the SEC's requested $1,761,920 in civil fraud penalties against Ms. Murphy is appropriate in this case. *See Sec. & Exch. Comm'n v. Spyglass Equity Sys., Inc.*, 2012 WL 13008422, at *3 (C.D. Cal. Apr. 5, 2012) ("The purposes of civil penalties are to punish the individual violator as well as deter future violations and thereby further the goals of "encouraging

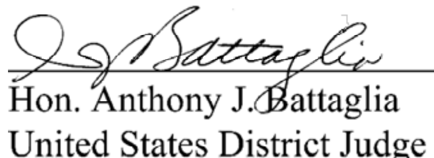
1 investor confidence, increasing the efficiency of financial markets, and promoting the
2 stability of the securities industry.")
3 Next, as with Mr. Gounaud and Mr. Murphy, the SEC also requests the Court to
4 enjoin Ms. Murphy for a period of ten years, from opening or maintaining any brokerage
5 account without providing the brokerage firm a copy of the Complaint and Final Judgment
6 in this case. The SEC also seeks to enjoin her from further violations of Section 15(a), and
7 violations of Section 10(b) and Rule 10b-5.
8 Considering the factors previously analyzed and incorporated herein, the Court finds
9 that there is a "reasonable likelihood of future violations of the securities laws" *Fehn*, 97
10 F.3d at 1295, and injunctions are therefore warranted. Again, the Court notes that Ms.
11 Murphy's equivocation regarding whether she will return to the securities business coupled
12 with her family's continued involvement in it, suggests that she may renew her professional
13 trading and that future violations might occur. The Court thus finds it appropriate to impose
14 injunctions against Ms. Murphy, enjoining her from further violations of Section 15(a),
15 Section 10(b), and Rule 10b-5. However, given the amount of civil penalties imposed
16 against her, the Court will, as it did with Mr. Murphy, exercise its discretion to reduce the
17 duration of the injunction requiring disclosure of the Complaint and Final Judgment in this
18 litigation to five years.
19 **IV. CONCLUSION**
20 Accordingly, based on the foregoing, the Court **GRANTS IN PART AND DENIES**
21 **IN PART** the SEC's motion for remedies. (Doc. No. 138.) In sum, as to Mr. Gounaud, the
22 Court reduces the SEC's requested civil penalties amount to $308,512.80 and declines to
23 impose an injunction against him. As to Mr. Murphy, the Court reduces the SEC's
24 requested civil penalties amount to $419,090.40 and imposes a permanent injunction
25 against future Section 15(a) violations and a five-year injunction to disclose a copy of the
26 Complaint and Final Judgment in this case to brokerage firms with which he engages. As
27 to Ms. Murphy, the Court imposes the full amount of the SEC's requested civil fraud
28

penalties, $1,761,920.00, and imposes a permanent injunction against future violations of Section 15(a), Section 10(b), and Rule 10b-5, and a five-year injunction to disclose a copy of the Complaint and Final Judgment in this case to brokerage firms with which she engages.

IT IS ORDERED that no later than February 16, 2021, the SEC submit a revised proposed final judgment against each defendant, incorporating the remedies found to be appropriate and reasonable for each, as discussed in this Order.

IT IS SO ORDERED.

Dated: February 3, 2021



Hon. Anthony J. Battaglia
United States District Judge

Exhibit C

OS Received 07/16/2021

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10
11 SECURITIES AND EXCHANGE COMMISSION,
12
13 Plaintiff,
14 vs.
15 RMR ASSET MANAGEMENT COMPANY, et al.,
16
17 Defendants.
18
19

Case No. 3:18-cv-01895-AJB-LL

FINAL JUDGMENT AS TO MICHAEL SEAN MURPHY

20 Consistent with the Court's Order Granting Plaintiff Securities and
21 Exchange's Motion for Summary Judgment (Dkt. No. 137), finding that Defendant
22 Michael Sean Murphy ("Defendant") violated Section 15(a)(1) of the Securities
23 and Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78o(a)(1)] and the
24 Court's Order Granting in Part and Denying in Part the SEC's Motion for
25 Remedies (Dkt. No. 186):
26 I.
27 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant
28

OS Received 07/16/2021

is permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], by making use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, a security without being registered in accordance with Section 15(a)(1) of the Exchange Act while engaged in the business of effecting transactions in securities for the account of others.

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 ORDERED, ADJUDGED, AND DECREED that Defendant is enjoined for a period of five (5) years from the date of this Final Judgment from, directly or indirectly, opening or maintaining any brokerage account(s) without providing the relevant brokerage firm(s) a copy of the Complaint and a copy of this Final Judgment.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay civil penalties in the amount of $419,040.40, pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by making this payment to the Securities and Exchange Commission within 30 days after entry of this Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment

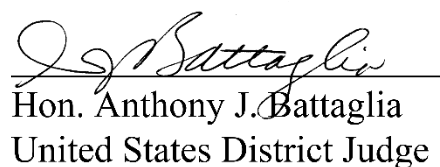
1 may also be made directly from a bank account via Pay.gov through the SEC
2 website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by
3 certified check, bank cashier's check, or United States postal money order payable
4 to the Securities and Exchange Commission, which shall be delivered or mailed to:
5 Enterprise Services Center
Accounts Receivable Branch
6 6500 South MacArthur Boulevard
Oklahoma City, OK 73169Enterprise Services Center
7 and shall be accompanied by a letter identifying the case title, civil action number,
8 and name of this Court; Michael Sean Murphy as a defendant; and specifying that
9 payment is made pursuant to this Final Judgment. Defendant shall simultaneously
10 transmit photocopies of evidence of payment and case identifying information to
11 the Commission's counsel in this action. By making this payment, Defendant
12 relinquishes all legal and equitable right, title, and interest in such funds.
13 The Commission shall hold the funds (collectively, the "Fund") and may
14 propose a plan to distribute the Fund subject to the Court's approval. The Court
15 shall retain jurisdiction over the administration of any distribution of the Fund.
16 The Commission may enforce the Court's judgment for civil penalties by
17 moving for civil contempt (and/or through other collection procedures authorized
18 by law) at any time after 30 days following entry of this Final Judgment.
19 Defendant shall pay post judgment interest on any delinquent amounts pursuant to
20 28 U.S.C. § 1961.
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27
28

1 IV.

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that for no
3 longer than one year following the date of entry of this Final Judgment, this Court
4 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
5 Final Judgment.

6 IT IS SO ORDERED.

7 Dated: February 12, 2021



8 Hon. Anthony J. Battaglia
9 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OS Received 07/16/2021

Exhibit D

OS Received 07/16/2021

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10
11 SECURITIES AND EXCHANGE COMMISSION,
12
13 Plaintiff,
14 vs.
15 RMR ASSET MANAGEMENT
16 COMPANY, et al.,
17 Defendants.
18
19

Case No. 3:18-cv-01895-AJB-LL

FINAL JUDGMENT AS TO JOCELYN M. MURPHY

20 Consistent with the Court's Order Granting Plaintiff Securities and
21 Exchange's Motion for Summary Judgment (Dkt. No. 137), finding that Defendant
22 Jocelyn M. Murphy ("Defendant") violated Section 15(a)(1) of the Securities and
23 Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78o(a)(1)] and Section 10(b)
24 of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder
25 [17 C.F.R. § 240.10b-5] and the Court's Order Granting in Part and Denying in
26 Part the SEC's Motion for Remedies (Dkt. No. 186):
27 ///
28

OS Received 07/16/2021

I.

IT IS HEREBY 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 ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], by making use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, a security without being registered in accordance with Section 15(a)(1) of the Exchange Act

OS Received 07/16/2021

1 while engaged in the business of effecting transactions in securities for the account
2 of others.
3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
4 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
5 binds the following who receive actual notice of this Final Judgment by personal
6 service or otherwise: (a) Defendant's officers, agents, servants, employees, and
7 attorneys; and (b) other persons in active concert or participation with Defendant
8 or with anyone described in (a).
9 III.
10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant
11 is enjoined for a period of five (5) years from the date of this Final Judgment from,
12 directly or indirectly, opening or maintaining any brokerage account(s) without
13 providing the relevant brokerage firm(s) a copy of the Complaint and a copy of this
14 Final Judgment.
15 IV.
16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
17 Defendant shall pay civil penalties in the amount of $1,761,920.00, pursuant to
18 Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy
19 this obligation by making this payment to the Securities and Exchange
20 Commission within 30 days after entry of this Judgment.
21 Defendant may transmit payment electronically to the Commission, which
22 will provide detailed ACH transfer/Fedwire instructions upon request. Payment
23 may also be made directly from a bank account via Pay.gov through the SEC
24 website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by
25 certified check, bank cashier's check, or United States postal money order payable
26 to the Securities and Exchange Commission, which shall be delivered or mailed to:
27 ///
28

OS Received 07/16/2021

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Jocelyn M. Murphy as a defendant; and specifying that payment is made pursuant to this Final Judgment. 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, Defendant relinquishes all legal and equitable right, title, and interest in such funds.

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

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

V.

IT IS FURTHER ORDERED, AJUDGED, AND DECREED that the SEC's Third Claim for Relief – for Violations of MSRB Rule G-17 – shall be dismissed with prejudice.

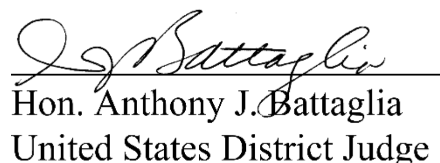
///
///
///
///
///
///

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that for no longer than one year following the date of entry of this Final Judgment, this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IT IS SO ORDERED.

Dated: February 12, 2021



Hon. Anthony J. Battaglia
United States District Judge

OS Received 07/16/2021