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MAR 13 2003
CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DISTRICT

ENTER ON 10:15
MAR 13 2003
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff

v.

ARASH AZIZ-GOLSHANI,
HOOTON MELAMED,
ALLEN DERZAKHARIAN,

Defendants

No. CV 99-13139 CBM (AJWx)

ORDER

**GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT, PERMANENT
INJUNCTION AND
DISGORGEMENT**

[docket # 89]

The matter before the Court, the Honorable Consuelo B. Marshall, Chief United States District Judge presiding, is Plaintiff's Motion for Summary Judgment against Defendant Arash Aziz-Golshani. The Court having considered Plaintiff's papers, hereby GRANTS Plaintiff's Motion for Summary Judgement.

JURISDICTION

This Court has jurisdiction pursuant to 15 U.S.C. §§ 77t(b), 77(d)(1), 77v(a) [Securities Act of 1933]; 15 U.S.C. §§ 78u(d)(3), 78u(e), 78aa [Securities and

MAR 13 2003

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1 Exchange Act of 1934]; and 28 U.S.C. § 1331.

2 **BACKGROUND AND PROCEDURAL HISTORY**

3 This is a securities fraud case committed by Defendants. The case originated
4 on December 15, 1999, where Plaintiff brought an action against Defendants alleging
5 violations of the federal securities laws by engaging in a fraudulent scheme to
6 manipulate the stock price of NEI Webworld, Inc. ("NEIP"). On May 23, 2001,
7 this Court granted partial summary judgment in favor of SEC. The Court ordered
8 disgorgement of illegal profits in the amount of \$152,742.50 and a civil penalty in the
9 amount of \$152,742.50 against Defendant Arash Aziz-Golshani ("Defendant").¹

10 Plaintiff filed an Amended Complaint on July 6, 2000, alleging Defendants
11 engaged in various other fraudulent schemes to manipulate the securities of eleven
12 other issuers.² The other issuers (stocks) are: JustWebit.com, Inc.; iChargeit, Inc.;
13 WorldTradeShow.com, Inc.; E*twoMedia.com, Inc.; Encounter.com, Inc.; Classified
14 Online.com; Virtual Games, Inc.; Foodvision.com, Inc.; YouTicket.com, Inc.;
15 Fashionmall.com, Inc.; and Casino Pirata.com.

16 Plaintiff alleges that by the same modus operandi as in the case involving the
17 NEIP stock, Defendant purchased shares of the issuers at low prices and manipulated
18 the prices of the shares by posting false messages about the issuer on Internet boards
19 or chatrooms. Defendant allegedly attempted to conceal his identity by creating
20 "phony screen names" obtained from Internet service providers through the use of
21 false and fictitious identifying information. Also, Defendant used computer terminals

22
23 ¹ On January 4, 2000, Defendant was indicted in a criminal action for two counts
24 of securities fraud and conspiracy. The indictment was limited to Defendant's
25 conduct with respect to the NEIP securities. Defendant entered a guilty plea on
26 March 15, 2000.

27 ² On January 22, 2001, Defendants Derzakarian and Melamed consented to the
28 issuance of a permanent injunction and disgorgement. Thus, Defendant motion for
summary judgment pertains only to Defendant Aziz-Golshani.

1 accessible to the general public, “including computers located at the University of
2 California at Los Angeles.”

3 On July 5, 2002, Plaintiff filed the instant Motion for Summary Judgment
4 against Defendant Aziz-Golshani on the eleven securities in the Amended Complaint.
5 Defendant did not file an opposition.

6 DISCUSSION

7 Plaintiff moves for summary judgment that as a matter of law, Defendant is
8 liable for securities fraud. Also, Plaintiff seeks a permanent injunction and
9 disgorgement of illegal gains.

10 A. Standard

11 Summary judgment against a party is appropriate when “the pleadings,
12 depositions, answers to interrogatories, and admissions on file, together with the
13 affidavits, if any, show that there is *no genuine issue as to any material fact* and that
14 the moving party is *entitled to a judgment as a matter of law.*” Fed.R.Civ.P.56(c)
15 (emphasis added). A party seeking summary judgment bears the initial burden of
16 informing the court of the basis for its motion and of identifying those portions of the
17 pleadings and discovery responses which demonstrate the absence of a genuine issue
18 of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the
19 nonmoving party will have the burden of proof at trial, the movant can prevail merely
20 by pointing out that there is an absence of evidence to support the nonmoving party’s
21 case. *See id.* If the moving party meets its initial burden, the nonmoving party must
22 then set forth, by affidavit or as otherwise provided in Rule 56, “specific facts
23 showing that there is a genuine issue for trial.” Fed.R.Civ.P.56(e); *Anderson v.*
24 *Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

25 In judging evidence at the summary judgment stage, the Court does not make
26 credibility determinations or weigh conflicting evidence and draws all inferences in
27 the light most favorable to the nonmoving party. *T.W. Elec. Svc., Inc. v. Pacific Elec.*

28 //

1 *Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir. 1987). The evidence presented
2 by the parties must be admissible. Fed.R.Civ.P.56(e). Conclusory, speculative
3 testimony in affidavits and moving papers is insufficient to raise genuine issues of
4 fact and defeat summary judgment. *See Thornhill Pub. Co., Inc. v. GTE Corp.*, 594
5 F.2d 730, 738 (9th Cir. 1979).

6 Once the moving party meets its initial burden, the burden shifts to the
7 nonmoving party to oppose the motion and “set forth specific facts showing that there
8 is a genuine issue for trial. If he does not so respond, summary judgment, *if*
9 *appropriate*, shall be entered against him.” *Nilsson, Robbins, Dalgarn, Berliner,*
10 *Carson & Wurst v. Louisiana Hydrolec*, 854 F.2d 1538, 1544 (9th Cir. 1988) (quoting
11 Fed.R.Civ.P.56(e)). (emphasis added.)

12 **B. Analysis**

13 **1. Liability Under the Federal Securities Laws**

14 Plaintiff alleges that Defendant violated Section 17(a) of the Securities Act;
15 Section 10(b) of the Exchange Act and Rule 10b-5.

16 “Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act
17 and Rule 10b-5, prohibit fraudulent conduct or practices in connection with the offer
18 or sale of securities. These provisions forbid making a material misstatement or
19 omission in connection with the offer or sale of a security by means of interstate
20 commerce.” *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 855-856 (9th Cir. 2001).
21 Plaintiff must show that the absence of a genuine issue of material fact that Defendant
22 (1) made material misstatement[s] or omission[s], (2) in connection with the offer or
23 sale of securities, (3) by means of interstate commerce. Plaintiff must also show that
24 Defendant acted with scienter, in making these material misstatements. Information
25 is “material” if there is “a substantial likelihood” that a reasonable investor would
26 consider it important to an investment decision.” *SEC v. Fehn*, 97 F.3d 1276, 1289
27 (9th Cir. 1995). “Scienter” is defined as a “mental state embracing intent to deceive,
28 manipulate or defraud.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976). Scienter

1 can be established by showing of recklessness. *Hollinger v. Titan Capital Corp.*, 914
2 F.2d 1564, 1572 (9th Cir. 1990) (en banc). Proof of recklessness may be inferred from
3 circumstantial evidence. *SEC v. Burns*, 816 F.2d 471, 474 (9th Cir. 1987); *See*
4 *Pagel, Inc., v. SEC*, 803 F.2d 942, 946 (8th Cir. 1986)(scienter inferred from evidence
5 of price movement, trading activity and other factors).

6 Here, there is no genuine issue as to any material fact. With each of the eleven
7 issuers, the evidence shows that Defendant purchased shares of the stock at a certain
8 price, disseminated false information about the stock on Internet message boards
9 similar to the style, language and tone of the false messages posted in the *NEIP*
10 stock, with intent to manipulate the price or market. As a result, the stock price was
11 affected. Defendant then sold the stock at a profit. For example, Defendant
12 manipulated the stocks as follows:

13 1. JustWebit.com, Inc., (JTWB)

14 On September 23, 24 and 29, 1999 Defendant purchased shares of JTWB at
15 various prices. False messages about this stock were posted on Internet message
16 boards throughout this period (at least two from the UCLA Biomedical Library on
17 September 25 and 27, 1999) in an effort to manipulate the price. The messages
18 affected trade conduct in the market. On September 28, 1999, Defendant sold the
19 stocks realizing a net profit of over \$19,000. *See J. Stark*³ II Decl. ¶s 17-20, 23-38,
20 Exhs. 9-10, 12-18.

21 2. iChargeit, Inc., (ICHG)

22 On or about April 6-9, 1999, Defendant purchased shares of ICHG at various
23

24 ³ John Stark ("Stark") is the Chief of the Office of Internet Enforcement of the
25 Securities and Exchange Commission, and one of the attorneys representing Plaintiff.
26 (See John Reed Stark III Decl. ¶ 1.) Stark filed three separate declarartions: Initial
27 Declaration of John Stark, filed on December 15, 1999 (Stark I); the Supplemental
28 Declaration of John Stark, filed February 15, 2000 (Stark II); and the Third
Declaration of John Stark (Stark III), filed on May 20, 2002. These declarations are
referenced and incorporated with the instant motion.

1 prices. False messages about this stock were posted on Internet message boards
 2 throughout this period (messages were sent from a computer located on the UCLA
 3 campus) in an effort to manipulate the price. The messages affected trade conduct in
 4 the market and on or about April 12 -13, 1999, Defendant sold the stocks at a profit.⁴

5 3. WorldTradeShow.com, Inc., (WTSW)

6 On May 14, 17 and 19, 1999, Defendant purchased shares of WTSW at various
 7 prices. False messages about this stock were posted on Internet message boards
 8 throughout this period. On May 18-19, 1999, Defendant sold the stocks at a profit.⁵

9 Similar to the conduct and activity in the above three stocks, Defendant also
 10 affected the remaining stocks in the same manner and realizing profits thereafter:
 11 E*two Media.com, Inc., (ETMD),⁶ Encounter.com, Inc., (ENCR),⁷ Classified
 12 Online.com (CLOL),⁸ Virtual Games, Inc., (ITOY),⁹ Foodvision.com, Inc.

14 ⁴ See J. Stark II Decl. ¶s 41-44, 50, Exhs. 20-23; J. Stark III Decl. ¶s 21-26,
 15 Exhs. 7-9.

16 ⁵ See J. Stark II Decl. ¶s 46-47, Exhs. 23-24; J. Stark III Decl. ¶s 3-10,
 17 Exhs. 1-3.

18 ⁶ Purchased on July 16, 19, 21, 22-23, 1999, false messages disseminated during
 19 this period and stocks sold on July 26, 27, 1999, at a profit. See J. Stark II Decl. ¶s 51-
 20 54, 57-59 Exhs. 25-27, 29; J. Stark III Decl. ¶s 11-13, 27-31, Exhs. 4, 10-11.

21 ⁷ Purchased on July 30, August 2-5 and 12, 1999, false messages disseminated
 22 during this period and stocks sold on August 3, 10 and 12, 1999, at a profit. See J.
 Stark II Decl. ¶s 61-64, 66-68, Exhs. 26-33; J. Stark III Decl. ¶s 14-16, Exh. 5.

23 ⁸ Purchased on July 26, 28, August 10, 13, 16-17, 1999, false messages
 24 disseminated during this period and stocks sold on August 17, 1999, at a profit. See
 25 J. Stark II Decl. ¶s 70, 72-73, 74, Exhs. 25, 30-32, 34; J. Stark III Decl. ¶s 32-36,
 Exhs. 12-13.

26 ⁹ Purchased on August 24, 27-28, 1999, false messages disseminated on August
 27 29, 1999 (from the UCLA Biomedical Library), and stocks sold on August 31, 1999,
 28 at a profit. See J. Stark II Decl. ¶s 76-77, 80-83, 84, Exhs. 31, 35, 37-38, 39; Stark

1 (FVSN),¹⁰ YouTicket.com Inc., (UTIX),¹¹ FashionMall.com, Inc., (FASH),¹² Casino
2 Pirata.com LTD (CSIN).¹³

3 Plaintiff has satisfied its burden to show that Defendant made “material
4 misstatement[s] or omission[s] in connection with the offer or sale of security by
5 means of interstate commerce.” *SEC v. Dain Rauscher, Inc.*, 254 F.3d at 855-856.
6 Plaintiff also acted with scienter. Given the evidence, no reasonable trier of fact
7 would find in favor of the Defendant. Accordingly, the Court finds as a matter of law
8 that Defendant violated the federal securities laws.

9 **2. Permanent Injunction and Disgorgement of Illegal Gains**

10 **A. Permanent Injunction**

11 “The granting or denying of injunctive relief” rests within the sound discretion
12 of the trial court.” *SEC v. Fehn*, 97 F.3d at 1295 (citations omitted). “A permanent
13 injunction is appropriate where there is “a reasonable likelihood of future violations
14 of the securities laws.” *Id.*, (quoting, *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir.

15
16 III Decl. ¶s 37-40, Exhs. 13-14.

17 ¹⁰ Purchased on September 6-8, 10, 1999, false messages disseminated during this
18 period and stocks sold on September 14, 1999, at a profit. *See* J. Stark II Decl. ¶s 86-
19 87, 89-90, 91 Exhs. 35, 39, 40; Stark III Decl. ¶s 17-19, 41-45, Exhs. 6, 15-16.

20 ¹¹ Purchased on October 5, 1999, false messages disseminated on October 6, 1999
21 (also using a previous Internet name “TheSeeker”) and stocks sold on October 7,
22 1999, at a profit. *See* J. Stark II Decl. ¶s 93-94, 97-103, 104, Exhs. 41, 43-46; Stark
23 III Decl. ¶s 102-103, Exh. 46.

24 ¹² Purchased on October 8, 11-12, 1999, false messages disseminated during this
25 period (also using a previous Internet name “TheSeeker”) and stocks sold on October
26 12-13, 1999, at a profit. *See* J. Stark II Decl. ¶s 106, 108-109, 110, Exhs. 41, 47.

27 ¹³ Purchased on June 17, 22-23, 25 and July 2 and 7, 1999, false messages
28 disseminated during this period (from the UCLA Biomedical Library) and stocks sold
on October 12-13, 1999, at a profit. *See* J. Stark III Decl. ¶s 46-53, 54-62, 63-66,
Exhs. 13, 17-19, 20-24, 25.

1 1980). The likelihood of future violations is evaluated under the totality of
2 circumstances. *Id.* Factors which can be considered are past wrongful conduct,
3 degree of scienter, recurrent nature of infraction. Here, there is a likelihood of future
4 violations if Defendant were not permanently enjoined. *Id.* at 1295. Defendant's
5 conduct was calculated with an intention to manipulate the market and stock prices
6 using several Internet services, school facilities and equipment, and family accounts.¹⁴
7 Thus, Plaintiff's request for a permanent injunction is GRANTED.

8 **B. Disgorgement**

9 The SEC has the authority to seek the imposition of a civil penalty against a
10 person who has violated the federal securities laws. 15 U.S.C. § 78u-1(a)(1). "The
11 amount of the penalty . . . shall be determined by the court in light of the facts and
12 circumstances, but shall not exceed three times the profit gained" 15 U.S.C. §
13 78u-1(a)(2). Imposing a civil penalty does not preclude the imposition of criminal
14 penalties. *See* 15 U.S.C. § 78u-1(a)(3) (A civil action "may be brought in addition
15 to any other actions that the Commission or the Attorney General are entitled to
16 bring.").

17 Here, Defendant's profits from his unlawful conduct involving the eleven
18 issuers (stocks) are \$339,392. *See* Mejia Decl. ¶ 7. Prejudgment interest is calculated
19 pursuant to the Commission standard formula at \$82,696.44. *Id.* at ¶ 8, Exh. 5. The
20 civil penalty requested by the SEC does not exceed the amount authorized by statute.
21 Defendant's request for disgorgement and prejudgment interest is GRANTED.

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27 ¹⁴ Defendant's mother was listed as an account holder on one of the brokerage
28 accounts.

1 **CONCLUSION**

2 For the foregoing reasons, Plaintiff's Motion for Summary Judgment,
3 Permanent Injunction and Disgorgement of Illegal Gains is GRANTED. Judgment
4 shall be entered in favor of Plaintiff SEC.

5
6
7 **IT IS SO ORDERED,**

8
9 **DATE: March 13, 2003**

10
11 
12 **CONSUELO B. MARSHALL, CHIEF JUDGE**
13 **UNITED STATES DISTRICT COURT**