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Filed

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PASSAIC COUNTY
DOCKET NO. C-56-12

JOHN J. HOFFMAN,
Acting Attorney General of the State of New Jersey on
behalf of his office and
LAURA H. POSNER,
Chief of the New Jersey Bureau of Securities,¹

Plaintiffs,

v.

BRANDED MARKETING, LLC,
a New Jersey limited liability company and d/b/a
1800Tarjetas.com;
BRANDED MARKETING, INC.,
a Delaware corporation;
RICHARD JACKOWITZ,
individually and as President and Chief Executive
Officer of Branded Marketing, LLC;
ANTHONY UVA,
individually and as Chief Marketing Officer of Branded
Marketing, LLC;
PATRICK GAINEY,
individually and as Manager of Investor Relations of
Branded Marketing, LLC,

Defendants,

and

IT CONNECT, INC.,
a Delaware corporation,

Nominal Defendant.

Civil Action

**FINAL JUDGMENT BY DEFAULT
AND ORDER**

¹ This action was commenced on behalf of former Attorney General Jeffrey S. Chiesa and former Bureau Chief Abbe R. Tiger. In accordance with R. 4:34-4, the caption has been revised to reflect the current Acting Attorney General and current Bureau Chief.

THIS MATTER was opened to the Court on the motion of Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey (“Attorney General”), and Laura H. Posner, Chief of the New Jersey Bureau of Securities (the “Bureau Chief”) (collectively, “Plaintiffs”), (Nicholas Kant, Deputy Attorney General, appearing), for the entry of an order of final judgment by default pursuant to R. 4:43-2 and such other relief as the Court deems appropriate (“Motion”) against Defendants Branded Marketing, LLC d/b/a 1800Tarjetas.com (“BMLLC”), Branded Marketing, Inc. (“BMI”), and Richard Jackowitz, individually and as President and Chief Executive Officer of Branded Marketing, LLC (“Jackowitz”) (collectively, “Defendants”),² and against Nominal Defendant IT Connect, Inc. (“IT Connect”). The Court having considered the papers submitted in support of this Motion, and for good cause shown, makes the following findings:

FINDINGS

1. The Court has jurisdiction over the subject matter of this action and over the named Defendants and IT Connect.
2. Defendants engaged in the conduct alleged in the Complaint.
3. BMLLC and BMI issued three different forms of “securities” as defined under the New Jersey Uniform Securities Law (1997) N.J.S.A. 49:3-47 et seq. (“Securities Law”).
4. BMLLC issued “stock” or alternatively limited liability interests (“BMLLC Interests”) that are “securities” under the Securities Law.

² In addition to BMLLC, BMI and Jackowitz, this action was commenced against Anthony Uva, individually and as Chief Marketing Officer of Branded Marketing, LLC (“Uva”); and Patrick Gainey, individually and as Manager of Investor Relations of Branded Marketing, LLC (“Gainey”). As Uva and Gainey have entered into settlements with Plaintiffs, they are not included in the defined term “Defendants” for purposes of this Final Judgment by Default and Order.

5. BMLLC issued promissory notes and/or loans (“BMLLC Notes”) that are “securities” under the Securities Law.
6. BMI issued stock (“BMI Stock”) that is a “security” under the Securities Law. (the BMLLC Interests, the BMLLC Notes and the BMI Stock are collectively referred to as “BM Securities”).
7. The BM Securities were not registered with the New Jersey Bureau of Securities (“Bureau”).
8. The BM Securities were not federal covered securities under N.J.S.A. 49:3-60.1.
9. The BM Securities were not exempt from registration under any provision of N.J.S.A. 49:3-60.
10. Jackowitz was not registered with the Bureau as an “agent,” as defined by N.J.S.A. 49:3-49(b), to offer and sell the BM Securities to, from, or within New Jersey, nor was he exempt from registration.
11. Jackowitz was/is the controlling principal of both BMLLC and BMI.
12. BMI was the successor corporation to and mere continuation of BMLLC.
13. Jackowitz violated N.J.S.A. 49:3-56(a) (acting as an agent without registration) and N.J.S.A. 49:4-60 (selling unregistered securities) by offering and selling the BM Securities to, from, or within New Jersey without being registered as an “agent” of BMLLC and BMI.
14. BMLLC and BMI, through Jackowitz and other individuals, violated N.J.S.A. 49:3-60 (selling unregistered securities) by issuing the BM Securities or selling the BM Securities through Jackowitz and other individuals, who were not registered as “agents” as required by N.J.S.A. 49:3-56(a).

15. BMLLC and BMI violated N.J.S.A. 49:3-56(h) (employing unregistered agents) by employing Jackowitz and others to sell BM Securities to, from or within New Jersey without being registered as an “agent” as required by N.J.S.A. 49:3-56(a).

16. Jackowitz, and BMLLC and BMI, in connection with the offer and sale of securities, made untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in violation of N.J.S.A. 49:3-52(b), as evidenced by, among other things:

- a. failing to inform the investors that Defendants were not registered to sell securities or were not exempt from registration;
- b. failing to disclose Jackowitz’s 2005 bankruptcy petition and large discharge of debt, as well as filing false tax returns that failed to disclose income from BMLLC;
- c. failing to disclose the FCC investigation of Jackowitz and IT Connect; and
- d. misrepresenting that investors’ funds would be used for business purposes and omitting to inform investors that their funds would not be used for business purposes.

17. Jackowitz, and BMLLC and BMI, through Jackowitz, engaged in acts, practices or courses of business that operated as a fraud or deceit upon investors in violation of N.J.S.A. 49:3-52(c) by selling the BM Securities on the basis of false, misleading and incomplete information.

18. For each violation of the Securities Law, Defendants could be assessed a penalty of \$10,000 for the first violation and \$20,000 for each subsequent violation pursuant to N.J.S.A. 49:3-70.1.

19. BMLLC and BMI are subject to joint and several liability.

20. Defendants committed Securities Law violations as shown in the chart below:

For the reasons and determinations made in this Court's opinion

SECURITIES LAW VIOLATION	NUMBER OF TRANSACTIONS/VIOLATIONS PER DEFENDANT	
	BVILFC and BML	JACKOWITZ
Sale of Unregistered Securities, N.J.S.A. 49:3-60	136	136
Acting as an Agent Without Registration, N.J.S.A. 49:3-56(a)	-	136
Employing Unregistered Agents, N.J.S.A. 49:3-56(h)	136	-
Omission of Material Fact, that Defendants Were Not Registered to Sell Securities or Exempt from Registration, N.J.S.A. 49:3-52(b)	136	136
Omission of Material Fact, that Jackowitz Declared Bankruptcy in 2005 and Filed False Tax Returns, N.J.S.A. 49:3-52(b)	136	136
Omission of Material Fact, FCC Investigation of Jackowitz and IT Connect, N.J.S.A. 49:3-52(b)	136	136
Misrepresentation and/or Omission of Material Fact, that Defendants Misused Funds, N.J.S.A. 49:3-52(b)	136	136
Act, Practice, or Course of Business Which Operates or Would Operate as a Fraud or Deceit Upon Investors, N.J.S.A. 49:3-52(c).	136	136
TOTALS	952	952

21. IT Connect was unjustly enriched by the direct and indirect transfer of funds and other things of value by Defendants.

THREFORE, IT IS on this 23 day of February, 2015, **ORDERED** that:

1. Final judgment by default is granted to Plaintiffs as to Count I of the Complaint for violations of N.J.S.A. 49:3-52(b);

2. Final judgment by default is granted to Plaintiffs and against defendants Jackowitz, BMLLC and BMI as to Count II of the Complaint for violations of N.J.S.A. 49:3-52(c);

3. Final judgment by default is granted to Plaintiffs and against BMLLC and BMI as to Count III of the Complaint for violations of N.J.S.A. 49:3-56(h);

4. Final judgment by default is granted to Plaintiffs Against defendant Jackowitz as to Count IV of the Complaint for violations of N.J.S.A. 49:3-56(a);

5. Final judgment by default is granted to Plaintiffs and against defendants Jackowitz, BMLLC and BMI as to Count V of the Complaint for violations of N.J.S.A. 49:3-60;

6. Final judgment by default is granted to Plaintiffs as to Count VI of the Complaint. Nominal Defendant IT Connect, which was unjustly enriched by Defendants at the expense of investors;

7. Defendants Jackowitz, Branded Marketing, LLC and Branded Marketing, Inc. are jointly and severally liable to pay restitution to the Bureau in the amount of Four Million One Hundred Forty Nine Thousand and Sixteen (\$4,149,016.00) Dollars, pursuant to the Securities Law, N.J.S.A. 49:3-69(a)(2);

8. Defendant Jackowitz is assessed a civil monetary penalty in the amount of Fourteen Million Two Hundred and Eighty Thousand ~~(\$14,280,000.00)~~ ^{\$ 9,246,000.00 MMM} Dollars, pursuant to the Securities Law, N.J.S.A. 49:3-70.1, for violations of N.J.S.A. 49:3-52(b), N.J.S.A. 49:3-52(c), N.J.S.A. 49:3-60, and N.J.S.A. 49:3-56(a);

9. Defendants Branded Marketing, LLC d/b/a 1800Tarjetas.com and Branded Marketing, Inc. are jointly and severally assessed civil monetary penalties in the amount of ~~Fourteen Million Two Hundred and Eighty Thousand (\$14,280,000.00)~~ ^{\$ 9,246,000.00 MMM} Dollars, pursuant to the

Securities Law, N.J.S.A. 49:3-70.1, for violations of N.J.S.A. 49:3-52(b), N.J.S.A. 49:3-52(c), N.J.S.A. 49:3-60, and N.J.S.A. 49:3-56(h);

10. Nominal Defendant IT Connect, Inc. is liable to pay Seven Hundred Seventy One Thousand Five Hundred and Thirty Five Dollars and Twenty Eight Cents (\$771,535.28) to the Bureau as disgorgement, pursuant to the Securities Law, N.J.S.A. 49:3-69(a)(2);

11. Final judgment is entered in favor of Plaintiffs against Richard Jackowitz, individually and as President and Chief Executive Officer of Branded Marketing, LLC, in the amount of Eighteen Million Four Hundred Twenty Nine Thousand and Sixteen (~~\$18,429,016.00~~ ^{\$14,166,551.28}) *MMM* Dollars;

12. Final judgment is entered in favor of Plaintiffs against Branded Marketing, LLC d/b/a 1800Tarjetas.com, and Branded Marketing, Inc., jointly and severally, in the amount of Eighteen Million Four Hundred Twenty Nine Thousand and Sixteen (~~\$18,429,016.00~~ ^{\$14,166,551.28}) *MMM* Dollars;

13. Final judgment is entered in favor of Plaintiffs against Nominal Defendant IT Connect, Inc. in the amount of Seven Hundred Seventy One Thousand Five Hundred and Thirty Five Dollars and Twenty Eight Cents (\$771,535.28) as disgorgement;

14. Payment of restitution, disgorgement and civil monetary penalties shall be made by attorney trust fund account check, certified check or other guaranteed funds, made payable to the "State of New Jersey, Bureau of Securities" and delivered to the attention of the Bureau Chief, at the following address: Bureau of Securities, 153 Halsey Street, 6th Floor, Newark, New Jersey, 07102;

15. Defendants, individually and by or through any corporation, business entity, agent, employee, broker, partner, officer, director, attorney, stockholder and/or any other person who is

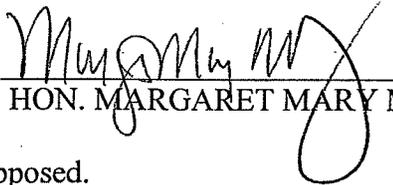
directly or indirectly under their control or direction, are permanently barred and enjoined from directly or indirectly violating the Securities Law and, specifically from:

- a. Engaging in the securities business in New Jersey in any capacity, including, but not limited to, employment as a broker-dealer, agent, investment adviser, investment adviser representative, or otherwise;
- b. Issuing, offering for sale or selling, offering to purchase or purchasing, distributing, promoting, advertising, soliciting and/or negotiating, advancing the sale of and/or promoting securities, or advising regarding the sale of any securities, in any manner to, from, or within the State of New Jersey; and
- c. Engaging in the conduct described in Plaintiffs' Complaint filed in this action;

16. Nothing contained in this Judgment and Order shall bind or affect any position which any party may take in future or unrelated action;

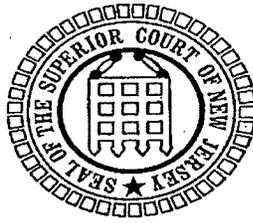
17. This Court retains jurisdiction for the purpose of enabling Plaintiffs or Defendants to apply to this Court for any such further orders and directions as may be necessary and appropriate for the enforcement of, or compliance with, this Judgment and Order; and

18. Plaintiffs shall serve a copy of this Judgment and Order upon all parties in interest within seven (7) days of receipt.



HON. MARGARET MARY MCVEIGH, P.J. CH.

This motion was X opposed _____ unopposed.



**SUPERIOR COURT OF NEW JERSEY
PASSAIC VICINAGE**

Margaret Mary McVeigh, P.J.Ch.
Presiding Judge, General Equity

COURTHOUSE
71 Hamilton Street, Chambers 100
Court Room 134
Paterson, New Jersey 07505 -2018

February 23, 2015

TO: Nicholas Kant, Esq.
Richard Jackowitz

RE: Hoffman v. Branded Marketing et al
Docket No.: C-56-12

Counsel:

John J. Hoffman, Acting Attorney General of the State of New Jersey, and Laura Posner, Chief of the New Jersey Bureau of Securities (collectively "Plaintiffs"), have filed a Motion for Entry of Final Judgment against the Defendants Richard Jackowitz and the entities controlled by him, including Branded Marketing L.L.C. ("BMLLC"), Branded Marketing Inc. ("BMI") and IT Connect. The Defendant Richard Jackowitz committed fraud between 2007 and 2010 by raising almost \$5,000,000 from at least 57 investors ("BM Investors") through the offer and sale of BMLLC and BMI Securities (collectively "BM Securities"). Jackowitz was the incorporator, President and CEO of BMLLC. (Kant Cert., Ex. O p.20.) During his deposition, Jackowitz admitted that BMLLC created a business plan to market pre-paid debit cards to Hispanic consumers. (Kant Cert., Ex. H 1T p.21 ln.16-p.26 ln.6.) BMI is a Delaware Corporation formed on January 6, 2010. Jackowitz was the sole director of BMI, the successor to BMLLC, and he steered every part of its operation. (Kant Cert., Ex. I 2T p.5 ln.21-ln.22.) IT Connect, formed on October 30, 2003, is also incorporated in Delaware. (Kant Cert., Ex. U.) Jackowitz was IT Connect's sole owner, Director and President. (Kant Cert., Ex. M 6T p.7 ln.6-ln.7; 6T p.18 ln.22-ln.23.) IT Connect marketed toll free vanity phone numbers, which is illegal, and ultimately resulted in It Connect's violation of the Federal Communication Commission ("FCC") regulations. (Kant Cert., Ex. M. 6T p.7 ln.3-ln.5.) According to Investigator Michael LaChapelle, neither the securities sold nor the agents selling these securities were registered with the New Jersey Bureau of Securities. (LaChapelle Cert., ¶10-13.) The Plaintiffs also assert that Jackowitz never registered as an agent of BMLLC or BMI as defined in N.J.S.A. § 49:3-49(b). (LaChapelle Cert., ¶14.) Moreover, the Plaintiffs accuse the Defendant Jackowitz of engaging in fraudulent acts, which included, but were not limited to, using investor funds for personal expenses and failing to disclose material facts to BMI and BMLLC investors, including his 2005 bankruptcy petition, the transfer of BM investor funds to IT Connect, and the ongoing FCC Investigation into IT Connect. The Defendants failed to respond to discovery requests and default was entered against BMLLC, BMI

and IT Connect on October 17, 2012, and default has not been vacated. (Kant Cert., Ex. B-D.) On August 23, 2013, the Court issued an Order suppressing Jackowitz's Answer without prejudice and entering default due to his failure to respond to the Plaintiffs' discovery requests. (Kant Cert., Ex. F.) On September 24, 2014, this Court entered an Order suppressing Jackowitz's Answer with prejudice as a result of his failure to respond to the Plaintiffs' discovery requests. (Kant Cert., Ex. G. ¶4.) The Plaintiffs have now filed this Motion for the Entry of Final Judgment against the Defendant Jackowitz. On June 16, 2014, Jackowitz pled guilty in federal court to filing false tax returns that failed to disclose income from BMLLC (\$105,512 in 2007 and \$359,677 in 2008). (LaChapelle Cert., ¶6; Ex. C. Plea)

In opposition to the Plaintiffs' Motion, the Defendant Jackowitz has submitted a circular and wholly unsupported opposition. Having given due consideration to Jackowitz's position, this Court finds that the Defendant's arguments have no legal or factual basis. Jackowitz opposes the Plaintiffs' motion by arguing that his decisions were made based upon the advice of counsel, who did not instruct him to register the subject securities. Setting aside the fact that the Defendant Jackowitz is in dire financial straits, the Defendant asserts that the monetary amount the Plaintiffs are attempting to recover from him is entirely unsubstantiated. However, the Defendant has failed to submit any evidence or affidavits in support of his opposition to the amounts that are owed. While Jackowitz argues in his opposition that "There are some undeniable facts that must be taken into consideration prior to any consideration for fines and/or restitution requested by the Plaintiffs," (Jackowitz Opposition p.1.) the Defendant has violated R. 1:6-2(a) and R. 1:6-6, by asserting facts that are not in the record. Moreover, the facts that are asserted are vague and conclusory. While Jackowitz attempts to address several of the exhibits submitted by the Plaintiffs in support of their motion, and to challenge the veracity of the Plaintiffs' position, his statements are self-serving. Without any supporting documentation or case law to support his position, this Court finds that the Defendant's arguments are without merit.

Having given due consideration the Plaintiffs' and Defendant's pleadings, this Court finds that the Plaintiff has provided sufficient evidence indicating the Defendant's multiple violations of New Jersey's security laws. As such, this Court shall impose a permanent injunction against the Defendants and order investor restitution, civil penalties, and the disgorgement of It Connect's profits. Specifically, the Defendants shall be obligated to pay \$4,149,016 in restitution and \$9,246,000 in civil penalties, and IT Connect shall be disgorged of \$771,535.28 in profits derived from investor funds.

Pursuant to R. 4:43-2, after default has been entered in accordance with R. 4:43-1, the Court may enter final judgment in the action. The facts presented to the Court for entry of final judgment will be viewed as sufficient if they "could conceivably be proved at trial and if proved would establish the legally required elements of plaintiff's claim for relief." Heimbach v. Mueller, 229 N.J. Super. 17, 23 (App. Div. 1988). The plaintiff need only satisfy the prima facie standard, which requires the Court to determine liability without weighing the evidence presented to it. Kolczycki v. City of East Orange, 317 N.J. Super. 505, 514 (App. Div. 1999). In determining the quality of evidence needed for an entry of final judgment by default, the Court has broad discretion. Chakravarti v. Pegasus Consulting, 393 N.J. Super. 203, 210 (App. Div. 2007). Note however that in proving damages for entry of final judgment, the plaintiff must submit sufficient, competent evidence for the Court to fix an amount. New Jersey Mortg. & Inv. Corp. v. Young, 134 N.J. Super.

392, 394 (Law Div. 1975). Pursuant to R. 4:33-2(b), the Court may conduct a proof hearing to take an account of the amount of damages or to establish the truth of any allegations by evidence. It is within the discretion of the trial judge as to whether such a hearing should take place. Metric Inv. Inc. v. Patterson, 98 N.J. Super. 130, 133 (Law Div. 1967), aff'd, 101 N.J. Super. 301 (App. Div. 1968).

First, the proofs submitted by the Plaintiffs indicate that the Defendant wrongfully engaged in the selling of unregistered securities, as the interests sold qualify as investment contracts under the Howey test, and the record is devoid of any attempt by Jackowitz to properly register these interests. Pursuant to N.J.S.A. § 49:3-60, it is unlawful for any security to be offered or sold in the state of New Jersey, unless the security is exempt, the security is registered under the Securities Act, or the security is a federally covered security, for which notice, filing and fees have been submitted. Pursuant N.J.S.A. § 49:3-49(m), the term security means any:

[N]ote; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement, including, but not limited to, certificates of interest or participation in real or personal property; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest in an oil, gas or mining title or lease; a viatical investment; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable number of dollars either in a lump sum or periodically for life or some other specified period.

The BMLLC interests sold to investors qualify as investment contracts under the Howey Test. According to the United States Supreme Court in SEC v. W.J. Howey Co., a particular contract, transaction or scheme is an investment contract when it involves an investment of money in a common enterprise with the expectation of profits to come solely from the efforts of others 328 U.S. 293, 298-99 (1946). This definition is designed to be flexible and to account for various schemes devised by those who seek the use of money from others in exchange for the promise of profits. Id. at 299. First, BM Investors gave money to maximize investor returns in BMI's and BMLLC's sale of prepaid debit cards. (Kant Cert., Ex. O.) As the Business Plan indicated, "The core executive management team is in place ready to execute this business plan leading to realization of the huge profit potential of a class high margin business model." (Kant Cert., Ex. O p.18.) The Business Plan noted that the Company was "poised to dominate" and "will continue to seek strategic alliances enabling it to accelerate its growth rate and establish an early market advantage." (Kant Cert., Ex. O p.18.) Investors such as Daniel Herscovici and Chinal Patel were promised that that "the company was about to explode" (Herscovici Cert., ¶4.) and that "huge profits were expected and that the investment could not go wrong." (C. Patel Cert., ¶ 6.) Second, establishing the common element prong, investor funds were pooled together primarily in BMLLC's Bank of America account ending in #6432. (LaChapelle Cert., ¶8.) Jackowitz told each of his investors, including Brett Slepokura, Scott Slepokura, James Thomas, and Daniel Herscovici and these funds would be used together to account for BMLLC's business expenses, and no one

would be paid a salary. (B. Slepokura Cert., ¶9; S. Slepokura Cert., ¶ 53; Thomas Cert., ¶ 11; and Herscovici Cert., ¶ 4.) However, contrary to these promises, Jackowitz cashed some investor funds at a check cash establishment, directed other funds to IT Connect. (LaChapelle Cert., ¶8.) Third, the profits derived from each BM Investor's investment were based solely upon Jackowitz's management of BMLLC and BMI. In fact, Jackowitz stated to investors of BMLLC that he was the President and "steered every part of BMLLC's operations." (Kant Cert., Ex I 2T p.5 ln.21-ln.22.) There is no indication that BM Investors partook in the management or operation of BMLLC or BMI.

In addition, the Plaintiffs have sufficiently established that by signing subscription agreements and encouraging investors to purchase interests, the Defendant Jackowitz qualified as a seller of securities. To establish that a defendant is liable as a seller of securities, the plaintiff must demonstrate either: (1) direct solicitation of an investor by the defendant; or (2) indirect participation in the sale by the defendant. Cola v. Tezrano, 129 N.J. Super. 47, 57-59 (Law Div. 1974). Here, Jackowitz, BMLLC and BMI, as the issuers of the subject securities (Kant Cert., Ex. P.) solicited BM Investors by: (1) signing subscription agreements memorializing the sale of BMLLC Interests to numerous investors including, but not limited to, Karen Ariola, Alan Bloch, Chrismichael Buendia, and David Collier. (Plaintiffs' Brief Appendices A-B); (2) soliciting BM Investors such as Daniel Herscovici and Scott Slepokura to purchase BMLLC Notes (Herscovici Cert., ¶ 7, Ex C.; S. Slepokura Cert., ¶ 30, Ex. X); and (3) personally negotiating with BM Investors, including Anthony Altobelli and David Schaer, to purchase BMI Stock. (Kant Cert., Ex K 4T p.23 ln 4-p.24 ln.17.) Furthermore, the Plaintiffs' indicate that Jackowitz acted as an unregistered agent in violation of N.J.S.A. § 49:3-56(a) and (h). Pursuant to N.J.S.A. § 49:3-56(a), it is unlawful for any person to act as an agent unless that person is registered or exempt from registration under the New Jersey securities laws. Moreover, N.J.S.A. § 49:3-56(h) provides that it is unlawful for any issuer to employ an agent in New Jersey, unless the agent is registered. An agent is as an individual, other than a broker dealer, effecting or attempting to effect the purchase and/or sale of securities. N.J.S.A. § 49:3-49(b). The factual record is devoid of any attempt by Jackowitz, the President of BMLLC, to register with the New Jersey Bureau of Securities as an agent of BMLLC or BMI. (Kant Cert., Ex I 2T p.5 ln.21-ln.22.) Therefore, not only were the interests sold by the Defendant clearly securities, but these interests were also unlawfully sold without having been properly registered.

Furthermore, the Plaintiffs have provided sufficient evidence that the Defendant Jackowitz violated the Anti-Fraud Provisions of Securities Act by failing to disclose material facts including his use of investor funds for personal expenses, the non-registration of the interests sold, his 2005 Bankruptcy Petition, and the ongoing FCC Investigation into IT Connect. Pursuant N.J.S.A. § 49:3-52, it shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, to directly or indirectly: (a) employ any device, scheme or artifice to defraud; (b) make any untrue statement of material fact or omit to state a material fact necessary in order to make the statement made not misleading; or (c) engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person. This court recognizes that the element of intent to deceive or scienter is not a requirement in proving a violation of the aforementioned statute. Bramblewood Investors, Ltd. V. C & G Associates, 262 N.J. Super. 96 (Law Div. 1992) (see also, Aaron v. SEC, 446 U.S. 680, 695-97 (1980), holding that there is no intent requirement under the federal equivalent provision). In determining whether the untrue

statement or omitted fact is material, the Court must ask whether the information is of a type that a reasonable investor might have considered important in making an investment. Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128, 153-54 (1972).

The account statements provided by the Plaintiffs indicate that Jackowitz, who was not registered to sell securities, controlled the Defendant BMLLC's bank accounts and misused investor funds for personal expenses including trips to resorts, home theatre systems, clothing, and appointments at nail salons. (LaChapelle Cert., ¶ 22, Ex J.) The account statements noted in LaChapelle's certification indicate that Jackowitz also used investor funds to issue checks as large as \$4,900 to himself, and he continuously made withdrawals from both BMI and BMLLC accounts. (LaChapelle Cert., ¶23, Ex. K; ¶24, Ex. L; ¶25, Ex M.) According to investors Brett Slepokura, Scott Slepokura, James Thomas, and Daniel Herscovici, Jackowitz failed to disclose to any of them that their funds would be used for these non-business related purposes. (B. Slepokura Cert., ¶9; S. Slepokura Cert., ¶53; Thomas Cert., ¶11 Herscovici Cert., ¶4.) Jackowitz also sent investors a Business Plan that purported exponential growth in BMLLC net profits from nearly \$2,000,000 in 2009, to \$20m in 2010 and to \$40m in 2011. (Kant Cert., Ex. O "Financial Projections".) Moreover, BMLLC's Business Plan stated, "The core executive management team is in place ready to execute this business plan leading to realization of the huge profit potential of a class high margin business model." (Kant Cert., Ex. O p. 18.) Investors such as Mr. Herscovici and Ms. Patel were promised that that "the company was about to explode" (Herscovici Cert., ¶ 4) and that "huge profits were expected and that the investment could not go wrong" (C. Patel Cert., ¶ 6.) And yet, the Defendant Jackowitz, as he had done with several other investors, failed to tell Ms. Patel and Mr. Herscovici that: (1) he had filed for bankruptcy and had discharged \$4,962,968.15 in debt in 2005; and (2) the money they invested for BMLLC's success was being transferred to a separate entity. (Kant Cert., Ex. L 5T p.149 ln.1-p.151; C. Patel Cert., ¶19-20.) In fact, as the screen shots of checks provided in Nicholas Kant's Certification illustrate, Jackowitz transferred funds from BMLLC to It Connect continuously (in October of 2007 for \$4,000, in January of 2008 for \$1,100, in February of 2008 for \$3,000, in March of 2008 for \$2,500 and in August of 2009 for \$41,000). (Kant Cert., Ex V.) Jackowitz also failed to disclose that the FCC had been conducting an ongoing investigation of Jackowitz and IT Connect since 2007. (Kant Cert., Ex. II.) Several investors, including Daniel Herscovici, James Thomas, Geri Kopelson, and Scott Slepokura all stated in their certifications that if they had known that the securities in which they invested were unregistered, that investors' funds were being transferred to another entity, that Jackowitz had filed for bankruptcy in 2005, or that their funds would be used for Jackowitz's personal expenses, they would not have invested in BMLLC or BMI. (Herscovici Cert., ¶ 24-28; Thomas Cert., ¶58-63; Kopelson Cert., ¶66-71; S. Slepokura Cert., ¶55-59.) Based upon these certifications provided by the Plaintiff, which illustrate a collection of omissions and misrepresentations made to BM Investors, it is undoubtedly clear that investors would not have given funds to BMLLC or BMI had they known about Mr. Jackowitz's financial hardships and unlawful use of investor funds.

Based upon these violations, this Court shall grant the Plaintiffs' request that the Defendant be permanently enjoined from engaging in any securities practices under New Jersey's securities laws. Pursuant to N.J.S.A. § 49:3-69(a)(2), upon a proper showing, the Court has the power to permanently enjoin a party from engaging in securities practices. Illustrating the application of this statute, the Court in Conroy v. Schultz found that because the Defendant had committed

fraudulent acts through the use of securities, the trial court had the authority to enjoin the defendant from engaging in future securities-related practice. 80 N.J. Super. 443, 453 (Ch. Div. 1963). Similarly, the Defendant Jackowitz made material misrepresentations to investors regarding the potential growth of BMI and BMLLC in order to gain their investment funds and to use those funds for his personal expenses. Even more, he failed to disclose to investors his 2005 Bankruptcy Petition or the ongoing FCC Investigation into IT Connect. In the interests of protecting future investors from such fraudulent acts, this Court shall enjoin the Defendant Jackowitz from engaging in future securities practices.

Moreover, this Court shall order the Defendant to pay restitution to those investors who were defrauded. Under N.J.S.A. § 49:3-69(a)(2), restitution or disgorgement may be authorized upon the finding of “any act constituting a violation of any provision” of the securities laws of the state of New Jersey. Here, the Defendants are liable for the losses suffered by BM Investors as a direct result of the sale of BMLLC and BMI securities. The Plaintiffs have provided sufficient evidence that the amount of restitution should be set at \$4,149,016. As the Plaintiffs’ detailed appendices A-C indicate: 56 investments for BMLLC Interests were made for a total value of \$2,675,000; 66 investments for BMLLC Notes were made for a total value of \$1,385,600; and 14 investments for BMI Stock were made for a total value of \$136,250. The total value of all investments is \$4,196,850. However, the Defendants have already paid partial restitution. Defendant Anthony Uva has paid \$15,000 toward investor restitution, pursuant to the terms of his own settlement. (Kant Cert., ¶ 7.) Also, according to Investigator LaChapelle’s Certification, an additional \$32,834 has already been returned to BM Investors. (LaChapelle Cert., Ex D Fn. 3.) Therefore, the total amount of restitution to be paid to BM investors shall be reduced to \$4,149,016.

In addition, this Court finds that, based upon the proofs submitted by the Plaintiff, civil monetary penalties should be imposed against the Defendants. The provisions of N.J.S.A. § 49:3-70.1 codify the Court’s ability to impose such penalties. The statute provides:

Any person who violates any of the provisions of this act or who violates any rule or order under this act, shall be liable for the first violation to a penalty of not more than \$ 10,000; for a second violation to a penalty of not more than \$ 20,000; and for each subsequent violation to a penalty of not more than \$ 20,000 per violation. One or more violations may occur at the same time or be part of the same conduct or pattern of conduct.

N.J.S.A. § 49:3-70.1

Such civil monetary penalties are within the sound discretion of the trial judge and must be large enough so as not to represent a mere cost of doing business. State v. Lewis, 215 N.J. Super. 564, 574-75 (App. Div. 1987). Here, the Plaintiffs argue that the total potential civil penalties that may be imposed upon each of the Defendants is \$19,030,000. (Plaintiffs’ Brief p. 35.) The total number of investments made is 136 (56 BMLLC Interests, 66 BMLLC Notes, and 14 BMI stock). (Plaintiffs’ Brief p. 35.) The Plaintiffs assert each of the following violations for each individual investment in support of its Entry of Final Judgment: (1) the sale of unregistered securities (N.J.S.A. § 49:3-60); (2) acting as an agent without registration (N.J.S.A. § 49:3-56(a)); (3) employing unregistered agents (N.J.S.A. § 49:3-56(h)); (4) an act, practice, or course of business

which operates or would operate as a fraud or deceit upon investors (N.J.S.A. § 49:30-52(b)); and (5) an act, practice, or course of business that operates as a fraud or deceit upon investors (N.J.S.A. § 49:3-52(c)). (See Plaintiffs' Brief p. 35.) The Plaintiffs also assert each of the following specific violations of N.J.S.A. § 49:30-52(b) for each individual investment: (a) omission of the material fact that the securities were unregistered; (b) omission of the material fact concerning the Defendant's financial impropriety; (c) omission of the material fact concerning the FCC's investigation of Jackowitz and IT Connect; and (d) the misrepresentation and omission of the material fact that Jackowitz was misappropriating investor funds. (Plaintiff's Brief p.35.) According to the Plaintiff, the Defendant committed 952 violations of New Jersey securities laws with respect to the 136 investments. (Plaintiffs' Brief p. 35.) The Plaintiffs request that a civil monetary penalty of \$15,000 per violation (which totals to \$14,280,000) be imposed against Jackowitz and jointly and severally against BMLLC and BMI.

This Court notes however that in accordance with the Appellate Division's holding in Lewis, one or more violations may occur at the same time or be part of the same conduct or pattern of conduct. 215 N.J. Super. at 574-575. As such, this Court takes issue with the Plaintiffs' attempt to attach multiple violations under N.J.S.A. § 49:3-52(b) to each of the 136 investments. For each investment, the Plaintiffs claim that the Defendants omitted or misrepresented to investors: (1) that the securities were unregistered; (2) that Jackowitz had engaged in financial impropriety; (3) that the FCC had investigated both Jackowitz and IT Connect; and (4) that Jackowitz had misused investor funds. While the standard for entry of final judgment when default has already been entered against a Defendant only requires the Plaintiffs to submit proofs that could conceivably be proved at trial, the Plaintiffs' proofs do not sufficiently establish that for each of the 136 investments, the Defendants made each of these four misrepresentations or omissions of material fact. Nevertheless, the proofs submitted by the Plaintiffs do clearly establish the Defendant's misconduct over the course of this entire investment scheme, and the occurrence of at least one violation of N.J.S.A. § 49:3-52(b) for each investment. Therefore, this Court will impose a penalty of \$20,000 for a single violation of N.J.S.A. § 49:3-56(b) with respect to each of the 136 investments.

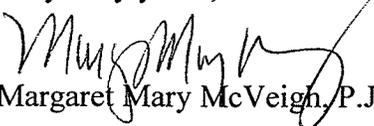
Moreover, this Court finds that imposing the maximum penalty for each of the other violations would be excessive. It does not benefit either the Plaintiff or the investors who have suffered as a result of the Defendant's unlawful conduct to impose gross penalties that, from a practical standpoint, Mr. Jackowitz will never be able to pay. As such, this Court shall impose civil monetary penalties as follows; a \$10,000 penalty for the first violation of the New Jersey securities law, N.J.S.A. § 49:3-60 (sale of unregistered securities), and a \$12,000 penalty for each violation of N.J.S.A. § 49:3-60 thereafter, totaling \$1,630,000. For each subsequent offense, including N.J.S.A. § 49:3-56(a) (acting as an agent without registration), N.J.S.A. § 49:3-56(h) (employing unregistered agents), and N.J.S.A. § 49:3-52(c) (practices which operate or would operate as fraud or deceit upon investors), this Court will impose a \$12,000 penalty for each violation. The penalty for these three violations on each of the 136 investments shall total \$4,896,000. Finally, as previously explained, this Court finds that the facts presented only permit this Court to find one violation of N.J.S.A. § 49:3-52(b) per investment. As such, this Court will impose the maximum penalty of \$20,000 for a single violation of N.J.S.A. § 49:3-52(b) upon each of the 136 investments, for a penalty of \$2,720,000. In sum, the total amount of civil penalties this Court will impose upon each of the Defendants, Jackowitz and jointly and severally against

BMLLC and BMI, is \$9,246,000. This amount is certainly higher than the mere cost of doing business and serves the public interest of deterring such reprehensible conduct in the securities market.

Finally, this Court finds that the Plaintiffs are entitled to the disgorgement of \$771,535.28 from IT Connect, because IT Connect is currently retaining profits unlawfully gained by Jackowitz through fraudulent conduct. A nominal defendant is a person who may be joined to aid the recovery for relief for a Plaintiff, without an assertion of subject matter jurisdiction. SEC v. Antar, 831 F. Supp. 380, 399 (D.N.J. 1993). The reason is that a nominal defendant has no ownership interest in the property that is the subject of the litigation. Id. Pursuant to the Appellate Division's holding in County of Essex v. First Union Nat. Bank, this Court finds that full disgorgement is a means to preventing unjust enrichment. 373 N.J. Super. 543, 549-53 (App. Div. 2004), cert. granted, 183 N.J. 218 (2005). The Supreme Court of New Jersey in VRG Corp. v. GKN Realty Corp. held that to establish unjust enrichment, the plaintiff must show both that the defendant received a benefit and that the retention of the benefit without payment would be unjust. 135 N.J. 539, 554 (1994). The party claiming unjust enrichment must show that it expected remuneration from the defendant at the time it performed for the other party, and that the failure of such remuneration would unjustly enrich the defendant beyond his or her contractual rights. Id. As a result of the Defendant Jackowitz's misuse of investor funds, IT Connect collected the following financial gains: (1) a transfer of funds from BMLLC to IT Connect in the amount of \$422,025 (Kant Cert., Ex. V.; Plaintiffs' Brief Appendix G.); (2) purchases made by IT Connect through the use of BMLLC's Bank of America Account #6432, in the amount of \$30,644.90 (Kant Cert., Ex. W; Plaintiffs' Brief Appendix H.); (3) a \$41,000 check made payable to IT Connect (Kant Cert., Ex. R.); (4) the transfer of BM Investor funds to IT Connect in the amount of \$87,500 (Kant Cert., Ex X.); and (5) payment by BMLLC for IT Connect's American Express bills in the amount of \$190,365.38 (LaChapelle Cert., ¶28, Ex. P.) According to the Plaintiffs and the statements provided, the total amount of ill-gotten profits IT Connect retained is \$771,535.28. It is clear to this Court that Jackowitz, in the process of his fraudulent acts, unlawfully conferred monies from BMLLC's and BMI's investors to IT Connect. Allowing IT Connect to claim ownership over these investors' funds, when it has no legitimate claim to fraudulently collected monies, would allow IT Connect to inequitably benefit from Jackowitz's unlawful misrepresentations and the investors' financial harm. As such, IT Connect is ordered to disgorge \$771,535.28 in profits.

For the aforementioned reasons, the Defendants shall be obligated to pay \$4,149,016 in restitution and \$9,246,000 in civil penalties, and IT Connect shall be disgorged of \$771,535.28.

Very truly yours,


Margaret Mary McVeigh, P.J.Ch.

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