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FILED

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
HUDSON COUNTY
DOCKET NO. C-125-12

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

Plaintiffs,

v.

PETER ZUCK, individually and as an officer,
general partner, and member of certain entity
defendants, MICHAEL J. SPAK, individually and
as an officer and member of certain entity
defendants, JOSEPH C. SPAK, individually and
as an officer and member of certain entity
defendants, JOHN R. NAJARIAN, individually
and as an officer and member of certain entity
defendants, BRIAN J. SPAK, individually and as
a member of certain entity defendants, OSIRIS
FUND LIMITED PARTNERSHIP, a New Jersey
limited partnership, OSIRIS PARTNERS, LLC, a
New Jersey limited liability company,
VICTORIA BRIALMONT, individually, JOHN
SCHEIRER, individually, LAURIE MAZZA,

Civil Action

**CONSENT ORDER AND FINAL
JUDGMENT AS TO DEFENDANT
PETER ZUCK**

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

individually, JAY JOHN SOOJIAN, individually,
and WAYNE G. PLAYER, individually,

Defendants,

and

PETER L. ZUCK, BRYAN J. ZUCK, NICOLE
ZUCK, JESSICA NAJARIAN, LORETTA
SPAK, ANS ENTERPRISES LLC, a limited
liability company, IGF CONSULTING LLC, a
limited liability company, DEXTER GROUP
LLC, a limited liability company, and WAYNE
PLAYER PRODUCTIONS, LLC, a limited
liability company,

Relief Defendants.

THIS MATTER was presented to the Court by the Attorney General of New Jersey on behalf of the Chief of the New Jersey Bureau of Securities ("Bureau" or "Bureau Chief") (collectively, "Plaintiffs") (Assistant Attorney General Kevin R. Jespersen and Deputy Attorney General Paul E. Minnefor appearing), pursuant to N.J.S.A. 49:3-69(a)(2) for violations of the New Jersey Uniform Securities Law (1997), N.J.S.A. 49:3-47 et. seq. (the "Securities Law"). On August 22, 2012, the Court entered a "Order Granting Preliminary and Ancillary Relief As to Defendant Peter Zuck" ("August 22, 2012 Order"), appointing Richard W. Barry as Receiver ("Receiver") (Thomas W. Halm, Esq. appearing) over Defendant Peter Zuck, with the powers set forth in N.J.S.A. 49:3-69(c) and (d) and Title 14 of the New Jersey Statutes, Corporations, General, among other powers, and establishing a receivership estate (the "Receivership Estate"). Plaintiffs, the Receiver and Peter Zuck have agreed to resolve any and all issues in controversy in this action under the terms set forth in this Consent Order and Final Judgment ("Consent Order").

The Court, having reviewed and approved the terms of this Consent Order, has found good and sufficient cause to enter this Consent Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Bureau Chief makes the following findings of fact and conclusions of law, which Peter Zuck neither admits nor denies:

1. The Osiris Fund Limited Partnership ("Osiris Fund") is a limited partnership formed under the laws of New Jersey with a principal place of business at 55 Spruce Street, Jersey City, New Jersey, 07306.

2. From 2009 through 2011, the Osiris Fund issued securities in the form of limited partnership interests ("Osiris Securities"), which were not registered with the Bureau, federally covered, or exempt from registration.

3. The Osiris Securities are securities in the form of limited partnership interests that entitled investors to, among other things, an ownership interest in the Osiris Fund.

4. Osiris Partners, LLC ("Osiris Partners") is a limited liability company formed under the laws of New Jersey, which also had a principal place of business at 55 Spruce Street, Jersey City, New Jersey 07306.

5. Osiris Partners operated as a general partner and the investment manager of Osiris Fund ("Osiris Entities"). Osiris Partners' primary source of income was a monthly management fee ("Management Fee") paid by the Osiris Fund and, generally, calculated as 3% of the Osiris Fund's NAV.

6. Peter Zuck, who resides with his family in Middletown, New Jersey, has several criminal convictions dating back to 1994, including securities fraud-based convictions.

7. Peter Zuck founded the Osiris Entities and served as the managing member, Chairman, "CIO" and senior partner of Osiris Partners, and managing member and general partner of Osiris Fund.

8. Peter Zuck was not registered with the Bureau as an agent of the Osiris Fund but he solicited investors to invest in the fund by purchasing Osiris Securities.

9. In connection with the offer and sale of the Osiris Securities, Peter Zuck and others provided potential investors with offering materials, including the "Osiris Partners LLC Offering Memorandum," which Peter Zuck helped draft.

10. The offering materials provided by Peter Zuck and others in connection with the offer and sale of the Osiris Securities failed to disclose Peter Zuck's criminal history and contained numerous false statements and omissions.

11. Peter Zuck and others represented to the prospective investors that they would be charged a management fee of no more than three (3%) percent of the Osiris Fund's net worth.

12. From about June 2009 to about November 2011, approximately \$12 million was invested in the Osiris Fund by approximately 76 investors.

13. Beginning in or about January 2010, Peter Zuck and others began to improperly divert assets of the Osiris Fund to the principals and associates of Osiris Partners.

14. Peter Zuck and others classified these diverted payments on Osiris Fund's internal books and records as either loans or inter-company transfers.

15. Despite the diversion of these funds, Peter Zuck and others fraudulently characterized these diverted payments as assets of the Osiris Fund on the monthly quarterly financial statements sent to Osiris Fund investors.

16. In or about April and May 2010, the Osiris Fund incurred trading losses of approximately \$4.5 million.

17. Peter Zuck and others failed to disclose those trading losses to investors and prospective investors of the Osiris Fund.

18. Peter Zuck and others sent Osiris Fund investors false financial statements that included a fictitious \$5 million asset.

19. For example, the May 2010 monthly statements sent to the Osiris Fund investors falsely stated that the fund's net asset value was approximately \$9.6 million when in truth its value was less than approximately \$4.3 million.

20. Peter Zuck and others then charged the Osiris Fund's investors fraudulently inflated management fees which were calculated as the percentage of the falsely inflated net asset value of the Osiris Fund as reported to investors, rather than the Osiris Fund's actual net asset value.

21. From about January 2010 to about October 2011, Peter Zuck and others received approximately \$3.9 million to which they were not entitled as a result of the fraudulent inflation of the management fees.

22. As of late 2011, the Osiris Fund's net asset value dropped to approximately zero (\$-0-) as a result of the improper diversion of the Osiris Fund assets, inflated management fees, trading losses and payments to investors.

23. Nonetheless, Peter Zuck and others sent a financial statement to investors for the third quarter of 2011 which falsely stated that the Osiris Fund's net asset value was approximately \$9.6 million.

24. Peter Zuck and others caused fraudulent financial statements to be sent via e-mail from Osiris Partners headquarters in New Jersey to numerous victim investors, including victim investors outside of New Jersey.

25. Peter Zuck caused a checking account to be opened in his son's name which he directed funds to be transferred to from the Osiris Fund. Although the checking account was not in his name, Peter Zuck transferred approximately \$1.3 million from the Osiris Fund into the account and withdrew those funds for his own benefit.

26. Peter Zuck caused his wife to receive up to \$1,500 per month in rent for the Jersey City Office, the main place of business for the Osiris Entities, even though she did not own the building.

27. Peter Zuck used more than \$300,000 from the Osiris Fund to pay for renovations to the Jersey City Office, and then increased the amount of rent paid to his wife, who did not own the building, to \$7,500 per month when the renovations were complete.

28. Based on the foregoing findings of fact by the Bureau Chief:

- a. Peter Zuck employed a device, scheme and artifice to defraud in violation of N.J.S.A. 49:3-52(a);

- b. Peter Zuck made materially false and misleading statements and/or omissions in violation of N.J.S.A. 49:3-52(b);
- c. Peter Zuck engaged in an act, practice or course of business which operated as a fraud or deceit in violation of N.J.S.A. 49:3-52(c);
- d. Peter Zuck unlawfully acted as an agent in effecting or attempting to effect transactions in Osiris Securities from and in New Jersey without being registered with the Bureau in violation of N.J.S.A. 49:3-56(a);
- e. Peter Zuck offered and sold securities that were not registered with the Bureau in violation of N.J.S.A. 49:3-60; and
- f. Peter Zuck was unjustly enriched.

THEREFORE, based on the Bureau Chief's foregoing findings of fact and conclusions of law, it is on this 25th day of April, 2014, **ORDERED AND AGREED THAT:**

PERMANENT INJUNCTIVE RELIEF

29. Peter Zuck, individually and by or through any person, corporation, business entity, agent, employee, broker, partner, officer, director, attorneys-in-fact, stockholder, and/or any other person who is directly or indirectly under their control or direction, is **PERMANENTLY ENJOINED AND RESTRAINED** from directly or indirectly:

- a. violating the Securities Law, including its anti-fraud provisions, N.J.S.A. 49:3-52(a) – (d);
- b. engaging in the securities business in New Jersey in any capacity including, but not limited to, acting as an agent as defined in N.J.S.A. 49:3-49(b), a broker-dealer as defined by N.J.S.A. 49:3-49(c), an investment adviser as

defined in N.J.S.A. 49:3-49(g), an investment adviser representative as defined in N.J.S.A. 48:3-49(s), or otherwise;

- c. issuing, offering for sale or selling, offering to purchase or purchasing, distributing, promoting, advertising, soliciting, negotiating, advancing the sale of and/or promoting securities, or advising regarding the sale of any securities, in any manner to, from or within New Jersey; and
- d. engaging in the conduct alleged in Plaintiffs' Verified Complaint filed in this matter.

30. Peter Zuck agrees to never apply to the Bureau in any capacity, including as a broker-dealer, an agent, investment adviser, or investment adviser representative as defined by the Securities Law.

DENIAL OF REGISTRATION EXEMPTIONS

31. Peter Zuck is denied all exemptions contained in N.J.S.A. 49:3-50 subsection (a) paragraphs 9, 10 and 11 and subsection (b), and the exemptions to the registration requirements provided by N.J.S.A. 49:3-56(b), N.J.S.A. 49:3-56(c) and N.J.S.A. 49:3-56(g).

DISGORGEMENT/RESTITUTION

32. Peter Zuck is liable to disgorge and pay restitution in the amount of Seven Million Five Hundred and Sixty Four Thousand Two Hundred and Seventy Three (\$7,564,273) Dollars ("Disgorgement/Restitution Amount"), pursuant to N.J.S.A. 49:3-69(a).

CIVIL MONETARY PENALTY

33. Pursuant to N.J.S.A. 49:3-70.1, Peter Zuck is assessed a civil monetary penalty for violations of the Securities Law, as stated herein, in the amount of One

Hundred and Thirty Five Thousand (\$135,000) Dollars for the above stated violations of the Securities Law.

FINAL JUDGMENT

34. Final judgment is hereby entered against Peter Zuck in the amount of Seven Million Six Hundred and Ninety Nine Thousand Two Hundred and Seventy Three (\$7,699,273) Dollars, constituting Seven Million Five Hundred Sixty Four Thousand Two Hundred and Seventy Three (\$7,564,273) Dollars in disgorgement/restitution pursuant to N.J.S.A. 49:3-69(a)(2) in favor of the Plaintiffs and the Receiver, and One Hundred and Thirty Five Thousand Dollars (\$135,000.00) as a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1 in favor of the Plaintiffs only.

35. The Disgorgement/Restitution Amount shall be paid directly to the Receiver.

36. All payments to the Receiver must be made by a certified bank check or an attorney trust account check made payable to "Richard W. Barry, as Receiver in Chiesa v. Zuck, et al."

37. The monies paid to the Receiver may be used by the Receiver in accordance with the law and Orders of this Court.

38. The civil monetary penalty shall be paid by a certified bank check or attorney trust account check payable to: "State of New Jersey, Bureau of Securities," 153 Halsey Street, 6th Floor, Newark, New Jersey, 07102, or to: "Bureau of Securities," P.O. Box 47029, Newark, New Jersey, 07101.

39. The civil monetary penalty shall be deposited in the Securities Enforcement Fund, pursuant to N.J.S.A. 49:3-66.1.

40. Peter Zuck must, within ninety (90) days of entry of this Consent Order submit to Plaintiffs and the Receiver an updated Financial Disclosure Certification in the form provided to Peter Zuck by Plaintiffs.

PRIVATE PARTY RELEASE

41. Immediately upon the entry of this Consent Order by the Court, all interests, claims and rights of Peter Zuck, including any person or entity controlled by Peter Zuck holding such an interest, claims or right on behalf of Peter Zuck, and/or to whom a court finds that Peter Zuck fraudulently or preferentially transferred such an interest, claim, or right, against the Receiver and the Receivership Estate or to any property or asset that is or becomes part of the Receivership Estate are hereby transferred to the Receiver, including, but not limited to, all claims and rights stated in any Proof(s) of Claim that Peter Zuck individually and/or collectively, filed or had the right to file with the Receiver in this case. In addition, Peter Zuck hereby waives his right(s) to, individually or collectively, file any Proof(s) of Claim with the Receiver in this case.

42. Peter Zuck waives his right(s) to seek recovery based on any claims, including known, unknown, accrued, unaccrued, vested and unvested claims, from the assets of the Receivership and from participating in any distribution of the Receivership's assets. Further, Peter Zuck by himself and his representatives, predecessors, successors and/or assigns, release, waive, disclaim and discharge the Receiver and the Receivership Estate in this action, the Receiver and each of their respective agents, attorneys and representatives, from any and all claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, controversies, costs, expenses, interest, attorneys' fees and losses whatsoever, whether in law or in equity, and

whether based on any federal law, state law, common law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued based upon wrongful or other acts, omissions, conduct or other matters, occurring prior to the date of this Consent Order.

ADDITIONAL PROVISIONS

43. As consideration for the terms in this Consent Order, Peter Zuck acknowledges, commits, and agrees to not file a bankruptcy petition within ninety one (91) days of the entry of this Consent Order.

44. Peter Zuck hereby agrees and concedes that this Consent Order is a non-dischargeable debt under the United States Bankruptcy Code, including but not limited to 11 U.S.C. § 523(a)(2), (a)(6), (a)(7), (a)(19).

45. Peter Zuck permanently waives his right(s) to argue, submit, propose, seek to establish, or otherwise contend before any court or tribunal, including the Bankruptcy Court, that this Consent Order is a dischargeable debt or claim under the United States Bankruptcy Code.

46. Within ninety (90) days of the entry of this Consent Order, Peter Zuck will provide the Bureau Chief and the Receiver with an updated Financial Disclosure Certification using a form that has been previously agreed to by the parties.

47. Peter Zuck shall cooperate with Plaintiffs and the Receiver in this litigation or any related litigation, investigation and/or proceeding. Peter Zuck's cooperation with Plaintiffs and the Receiver is material to the Plaintiffs and the Receiver and shall include, but is not limited to:

- a. voluntarily and promptly appearing, without a subpoena and at his own expense, to serve as a witness at trial in this litigation in order to testify completely and truthfully, subject to and without waiving any constitutional rights or privileges;
 - b. voluntarily and promptly attending and completing any meetings requested by Plaintiffs and/or the Receiver, including but not limited to witness preparation sessions at Plaintiffs' office at least fourteen (14) days prior to the first day of trial in this litigation, subject to and without waiving any constitutional rights or privileges;
 - c. agreeing to and complying with the terms outlined in this Consent Order;
and
 - d. voluntarily and promptly responding to Plaintiffs' and/or the Receiver's requests for documents or evidence, subject to and without waiving any constitutional rights or privileges.
48. A "Triggering Event" is defined to include the following circumstances:
- a. The discovery by the Plaintiffs and/or the Receiver that any material information provided by Peter Zuck to Plaintiffs and/or the Receiver including, but not limited to, testimony, statements or any information set forth in a Financial Disclosure Certification or updated Financial Disclosure Certification was or is false and/or misleading;
 - b. Peter Zuck's failure to cooperate and serve as a witness for the Plaintiffs and/or the Receiver pursuant to this Consent Order, subject to and without waiving any constitutional rights or privileges;

- c. Plaintiffs' violation or breach of any provision of this Consent Order and the terms of the Consent Order;
 - d. the filing of any proceeding or litigation (e.g., adversary proceeding in a bankruptcy court or otherwise) by Peter Zuck, his representative(s) (including a trustee in bankruptcy), predecessor(s), successor(s), assign(s), or any person or entity controlled by Peter Zuck against the Plaintiffs or the Receiver that seeks to affect the Plaintiffs or the Receiver's rights or benefits under this Consent Order in any manner whatsoever; or
 - e. determination by any court or tribunal that any aspect of this Consent Order is not a non-dischargeable debt, or subject to a material modification.
49. Upon any Triggering Event, the Plaintiffs and/or the Receiver may:
- a. commence an action in any court to enforce this Consent Order and collect an increased judgment of \$8,564,273 (constituting of \$7,564,273 in restitution/disgorgement and a \$1,000,000 civil monetary penalty) ("Increased Judgment"), the entry of which Peter Zuck must consent to and which he waives his right(s) to oppose. The Increased Judgment shall be due immediately upon entry;
 - b. move to vacate, or commence an action to rescind this Consent Order thereby terminating this settlement and compromise, returning the parties to their positions prior to its entry (except insofar as this Consent Order constitutes a non-dischargeable debt and is valid under the provisions of

the United States Bankruptcy Code), and permitting them to assert any claims against and seek any and all remedies from Peter Zuck relating to the actions, disputes, or claims resolved through this Consent Order; or

c. take any action permitted by law.

50. In the event that the Plaintiffs or the Receiver choose, at their sole discretion, to assert rights under the prior paragraph of this Consent Order, Peter Zuck shall:

- a. not assert any defenses based on jurisdiction, lack of standing, statutes of limitations, or statute of repose, all of which defenses are hereby waived;
- b. consent to the vacation or rescission of this Consent Order, if requested by the Plaintiffs or the Receiver to do so; and
- c. be responsible for all reasonable attorneys' fees and costs incurred by the Plaintiffs or the Receiver for having to take such actions.

51. By the parties' signatures below, in consideration of the parties' desire to resolve the issues herein and having had full opportunity to consult with counsel, Peter Zuck hereby consents to the jurisdiction of the Plaintiffs and voluntarily waives any right to assert any defenses, or to raise any challenge that Peter Zuck otherwise may have, to this Consent Order.

52. This Consent Order shall not bind any person or entity not a party thereto.

53. Peter Zuck shall not represent or imply that any act engaged in or practice used hereinafter has been required or approved, in whole or in part, by the State of New Jersey, the Attorney General of New Jersey, the Division of Law, the Bureau, or any New Jersey agency, agent or subdivision, including its employees.

54. This Consent Order constitutes the entire agreement between Peter Zuck, the

Plaintiffs and the Receiver and shall bind the parties as to the issues in controversy in this action.

55. Nothing contained herein shall, in any manner, be construed to limit or affect: (a) any position that the Plaintiffs may take in any future or pending action, not specifically encompassed herein; and (b) the rights of any person who may have a claim against Peter Zuck.

56. If any portion of this Consent Order is held invalid or unenforceable by operation of law or court order, the remaining terms of this Consent Order shall remain in full force and effect.

57. Each of the undersigned has read, understands, and agrees to be bound by the terms of this Consent Order.

58. This Consent Order may be docketed as a judgment at any time after it is entered by the Court.

59. Peter Zuck represents that he has been given ample opportunity to seek legal advice prior to signing this Consent Order.

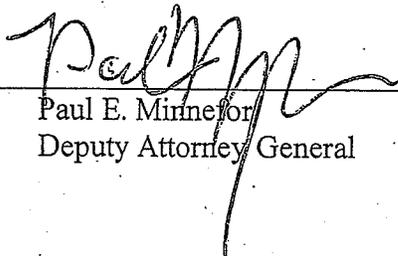
60. Peter Zuck waives any right he may have to appeal this Consent Order.

61. This Court retains jurisdiction to enforce, modify or otherwise hear any application arising from the terms of this Consent Order.


HON. HECTOR R. VELAZQUEZ, P.J. CH.

CONSENT TO THE FORM, CONTENT
AND ENTRY OF THIS CONSENT ORDER
AND FINAL JUDGMENT:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Paul E. Minner for
Deputy Attorney General

Dated: 4/10/14

Peter Zuck, Defendant

Dated:

Hill Wallack LLP
202 Carnegie Center
Princeton, New Jersey 08540
Counsel for Receiver Richard W. Barry

By: _____
Thomas W. Halm, Jr., Esq.

Dated:

CONSENT TO THE FORM, CONTENT
AND ENTRY OF THIS CONSENT ORDER
AND FINAL JUDGMENT:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____
Paul E. Minnefor
Deputy Attorney General

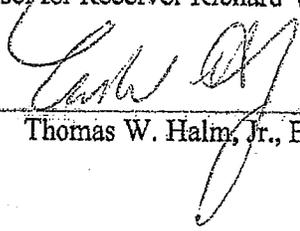
Dated:



Peter Zuck, Defendant

Dated: Apr 29th, 2014

Hill Wallack LLP
202 Carnegie Center
Princeton, New Jersey 08540
Counsel for Receiver Richard W. Barry

By: 

Thomas W. Halm, Jr., Esq.

Dated: 4/10/14