

IN THE SUPREME COURT
OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,

Appellant,

— *vs.* —

BRITISH COLUMBIA SECURITIES COMMISSION,

Respondent.

Case No. 78833

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JOINT APPENDIX
Volume 8, Bates Nos. JAX1393–1530

Appeal from Case No. A-18-771407-C
Eighth Judicial District Court For Clark County
Hon. Adriana Escobar

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First Amended Answer of Defendant Michael Patrick Lathigee (filed 06/06/18)	Vol. 1, Bates Nos. JAX21–25
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Reply in Support of Defendant Lathigee's Motion for Summary Judgment (filed 11/21/18)	Vol. 7, Bates Nos. JAX1218–1235
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EXHIBIT 3



BRITISH
COLUMBIA

Securities Act

SECURITIES REGULATION

B.C. Reg. 196/97

Deposited and effective June 17, 1997

Last amended June 26, 2018 by B.C. Reg. 135/2018

Consolidated Regulations of British Columbia

This is an unofficial consolidation.

Consolidation current to August 27, 2018

B.C. Reg. 196/97 (O.C. M244/97), deposited and effective June 17, 1997, is made under the *Securities Act*, R.S.B.C. 1996, c. 418, s. 183.

This is an unofficial consolidation provided for convenience only. This is not a copy prepared for the purposes of the *Evidence Act*.

This consolidation includes any amendments deposited and in force as of the currency date at the bottom of each page. See the end of this regulation for any amendments deposited but not in force as of the currency date. Any amendments deposited after the currency date are listed in the B.C. Regulations Bulletins. All amendments to this regulation are listed in the *Index of B.C. Regulations*. Regulations Bulletins and the Index are available online at www.bclaws.ca.

See the User Guide for more information about the *Consolidated Regulations of British Columbia*. The User Guide and the *Consolidated Regulations of British Columbia* are available online at www.bclaws.ca.

Prepared by:
Office of Legislative Counsel
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Consolidation current to August 27, 2018

*Securities Act***SECURITIES REGULATION****B.C. Reg. 196/97***Contents*

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Securities Act

SECURITIES REGULATION

B.C. Reg. 196/97

PART 1 – INTERPRETATION

Definitions

- 1** In this regulation:
- “**Act**” means the *Securities Act*;
- “**MTN Program**” has the meaning ascribed to that term in National Instrument 44-102 *Shelf Distributions*;
- “**PREP prospectus**” means a base PREP prospectus or a supplemented PREP prospectus as those terms are defined in National Instrument 44-103 *Post-Receipt Pricing*;
- “**Rules**” means the Securities Rules.
- [am. B.C. Regs. 388/2000, s. 1; 416/2003, s. 1; 43/2008, s. 2 (a); 225/2009, s. 1.]

PART 2

- 2** to **6** Repealed. [B.C. Reg. 386/2003, s. 1 (a).]

PART 3 – CLAIMS UNDER SECTION 15.1 OF THE ACT

Definitions

- 7.1** In this Part:
- “**eligible applicant**” means a person who
- (a) suffered pecuniary loss as a direct result of misconduct that resulted in an order for which the commission gave notice under section 7.2,
 - (b) did not directly or indirectly engage in the misconduct that resulted in the order, and
 - (c) has not been denied a claim under section 7.4 (6);
- “**order**” means an order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g) of the Act.
- [en. B.C. Reg. 91/2014, Sch. s. 1.]

Notification procedure

- 7.2** (1) If the commission receives money from an order, for the purpose of giving notice under section 15.1 (1) of the Act, the commission must
- (a) issue a press release, and
 - (b) post a notice on the commission's website.
- (2) A notice under subsection (1) (b) must be posted until the earlier of

B.C. Reg. 196/97**SECURITIES ACT
SECURITIES REGULATION****Part 3 – Claims Under Section 15.1 of the Act**

- (a) 3 years from the date that the notice is first posted, and
 - (b) the date on which all money received under the order has been paid out under this Part.
- (3) A press release and a notice under subsection (1) must include the following:
- (a) a description of the misconduct that resulted in the order;
 - (b) the name of each party to the proceeding that resulted in the order;
 - (c) the amount of money received by the commission from the order;
 - (d) a statement that a claim for the money can be made by applying to the commission.
- (4) If, after the commission has posted a notice under subsection (1) (b), the commission receives additional money under the order, the commission must post on its website the total amount of money received under the order.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

Claims application

- 7.3** (1) An application for a payment under section 15.1 of the Act must be in the required form.
- (2) If a person has made an application under section 15.1 of the Act and the information provided in the application changes in a material respect so that the information provided is false or misleading, the person must report the change to the commission promptly.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

Adjudication of claims

- 7.4** (1) If the commission determines that an applicant is an eligible applicant in respect of an order, the commission may make a payment to the eligible applicant from money received from the order.
- (2) When determining the amount to be paid to an eligible applicant, the commission must consider the following:
- (a) the amount of money received from the order;
 - (b) the loss suffered by the eligible applicant;
 - (c) the losses suffered by all eligible applicants;
 - (d) any other information the commission considers appropriate in the circumstances.
- (3) When determining an applicant's loss for the purposes of this section, the commission must not include any amount claimed by the applicant in respect of a loss of opportunity, including interest on any loss, and must consider the following:

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Part 3 – Claims Under Section 15.1 of the Act

- (a) whether the applicant received or is entitled to receive compensation from other sources for the loss arising from the misconduct that resulted in the order;
 - (b) whether the applicant benefitted from the misconduct that resulted in the order;
 - (c) the results of any hedging or other risk limitation transactions made by the applicant.
- (4) The commission may prorate payments among eligible applicants if, having considered the matters under subsection (2), the commission determines that the money the commission received from the order is insufficient to pay the claims of all eligible applicants.
- (5) A prorated payment made to an eligible applicant must be determined in accordance with the following formula:

$$\frac{A \times B}{C}$$

where

- A = the amount of money the commission received under the order,
- B = the loss suffered by the eligible applicant, and
- C = the losses suffered by all eligible applicants.

- (6) The commission may deny an applicant's claim if the applicant
- (a) fails to comply with section 7.3 (2), or
 - (b) makes a statement or provides information to the commission that, in a material respect and at the time and in the light of the circumstances in which it is made, is false or misleading, or omits facts from the statement or information necessary to make that statement or information not false or misleading.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

Opportunity to be heard

- 7.5** Except for a decision to prorate payments under section 7.4 (4), the commission must not deny all or part of a claim without giving the applicant an opportunity to be heard.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

Advance payments

- 7.6** The commission may make a payment to an eligible applicant, including a partial or installment payment, before the period described in section 15.1 (5) of the Act has expired.

[en. B.C. Reg. 91/2014, Sch. s. 1.]

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Part 4 – Investigations and Audits

PART 4 – INVESTIGATIONS AND AUDITS

Application

- 8** The practices and procedures set out in this Part apply to every investigation and audit conducted under Part 17 of the Act.

Personal service

- 9** (1) A summons or demand for production of records and things issued by a person under section 144 of the Act must be served personally on the individual summoned or from whom the records and things are demanded.
- (2) A person summoned under section 144 of the Act must be paid the fees and allowances for the person's attendance before the investigator to which a witness summoned to attend before the Supreme Court is entitled.

Form of summons or demand

- 10** (1) A summons to a person to appear before an investigator under section 144 (1) (a) of the Act must be in the required form.
- (2) A demand for production of records and things under section 144 (1) (c) of the Act must be in the required form.

Affidavit

- 11** The service of a summons, the payment or tender of fees and allowances to a person summoned, the demand for production of records and things or the service of a notice on a witness may be proved by an affidavit in the required form.

Application to Supreme Court to enter premises and obtain information

- 12** An application for an order under section 143 (3) of the Act must be made in accordance with the Supreme Court Civil Rules.

[am. B.C. Reg. 166/2010.]

PART 5 – DESIGNATION FOR SECTION 155 (1) (g) OF THE ACT**Offence**

- 13** Section 24 of the Securities Rules is specified for the purpose of section 155 (1) (e) of the Act.

[am. B.C. Reg. 232/2006, Sch. s. 2.]

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Part 6 – Reviews and Appeals

PART 5.1 – PRESCRIBED SELF REGULATORY BODIES

Prescribed self regulatory bodies

13.1 For the purposes of section 163 (1.1) of the *Securities Act*, the following self regulatory bodies are prescribed:

- (a) Investment Industry Regulatory Organization of Canada;
- (b) Mutual Fund Dealers Association of Canada.

[en. B.C. Reg. 135/2018, s. (b).]

PART 6 – REVIEWS AND APPEALS

Application

14 This Part applies to a hearing required or permitted to be held under the Act or the regulations other than a hearing held under Part 17 of the Act.

Notice

15 In addition to any other person to whom notice is required to be given, notice in writing of the time, place and purpose of a hearing must be given to any person considered by the person presiding to be directly affected by it.

Receiving evidence

- 16**
- (1) All oral evidence received at the hearing may be taken down in writing or preserved as the person presiding directs.
 - (2) The oral evidence recorded, the documentary evidence and things received in evidence form the record.

Representation by counsel

17 A person attending a hearing or submitting evidence at a hearing under this Part may be represented by counsel.

Decision

- 18**
- (1) After a hearing, if the decision made at it adversely affects the right of a person to trade in securities, at the request of the person affected, the person presiding must issue written reasons for the decision.
 - (2) The person presiding must give notice of every decision and accompanying written reasons as soon as practicable to every person to whom notice of the hearing was given and to every person who is, in the opinion of the person presiding, directly affected by the decision.

When hearing public

19 (1) Subject to subsection (2), every hearing is open to the public.

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SECURITIES REGULATION****Part 6 – Reviews and Appeals**

- (2) If the person presiding considers that a public hearing would be unduly prejudicial to a party or a witness and that to do so would not be prejudicial to the public interest, the person presiding may order that the public be excluded for all or part of the hearing.

Sufficiency of notice

- 20** Any notice required under this Part is sufficiently given if sent to the required person in accordance with section 180 of the Act or to an address directed by the person presiding.

Referral of question to commission

- 21** (1) If the executive director is of the opinion that a material question affecting the public interest or a novel question of policy or interpretation is raised because of
- (a) an application made to the executive director,
 - (b) a record filed with the executive director, or
 - (c) a matter arising out of the exercise or performance by the executive director of an authorized power or duty,
- the executive director may refer the question to the commission for determination.
- (2) If a question is referred under subsection (1), the executive director must
- (a) state the question in writing, setting out the facts on which it is based, and
 - (b) file with the commission the written question together with additional information the executive director considers relevant.
- (3) The commission, without delay, must send the material filed under subsection (2) (b) to the person who made the application or who filed the document out of which the question arose.
- (4) Notice of any hearing to be held by the commission under this section
- (a) must be given to all persons who the commission considers or who, in the opinion of the executive director, are interested parties, and
 - (b) is sufficiently given if posted on a publicly accessible website maintained by the commission.
- (5) The commission must consider and determine a question referred to it under this section by holding a hearing, and may remit any matter to the executive director for a decision in accordance with its determination.

[am. B.C. Reg. 386/2003, s. 1 (b).]

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Part 7 – Fees

PART 7 – FEES

Fees payable

22 Unless otherwise prescribed, for a matter described in Column 1 the executive director must be paid the fee prescribed in Column 1 or Column 2:

Item	Column 1	Column 2
1	<p>(1) (a) Subject to paragraphs (b) and (c), for seeking or maintaining registration in any of the following:</p> <ul style="list-style-type: none"> (i) any category of dealer; (ii) any category of adviser; (iii) the category of investment fund manager. <p>(b) If a person is seeking or maintaining registration in more than one category, only the highest applicable fee under paragraph (a) is payable.</p> <p>(c) If a person is already registered and is seeking registration in one or more additional categories, the fee is the greater of the following:</p> <ul style="list-style-type: none"> (i) the highest fee under paragraph (a) for the categories applied for minus any fees already paid for maintaining registration during the calendar year, and (ii) 0. <p>(2) For seeking or maintaining registration in one or more of the following categories:</p> <ul style="list-style-type: none"> (a) dealing representative; (b) advising representative; (c) associate advising representative. <p>(3) A fee for maintaining registration for a calendar year must be paid on or before December 31 of the previous calendar year.</p>	<p>\$2 500</p> <p>\$1 500</p> <p>\$1 200</p> <p>\$250</p>
2 to 7	Repealed. [B.C. Reg. 225/2009, s. 3.]	
8	For each day that the financial statements of a registered dealer, investment fund manager or adviser have not been filed as required under National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> , unless the commission or executive director has exempted in writing the registered dealer, investment fund manager or adviser from the requirement to file financial statements	\$100
9	<p>(a) Subject to paragraphs (b) and (c), for filing a preliminary prospectus, a preliminary base shelf prospectus under National Instrument 44-102 <i>Shelf Distributions</i>, a preliminary base PREP prospectus under National Instrument 44-103 <i>Post-Receipt Pricing</i> or a pro forma prospectus</p> <p>(b) For filing a preliminary or pro forma prospectus for a mutual fund</p> <p>(c) For filing a preliminary exchange offering prospectus</p>	<p>\$2 500</p> <p>\$1 500</p> <p>\$1 500</p>
10	For filing a prospectus, the amount, if any, by which	
	(a) 0.02%, or	

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Part 7 – Fees

Item	Column 1	Column 2
	(b) in the case of a money market fund, 0.01% of the proceeds realized by the issuer or securityholder from the distribution under the prospectus to purchasers in British Columbia exceeds the aggregate of the fees paid under item 9, which amount must be paid in accordance with sections 24 and 25	
11	For filing an annual information form by an issuer other than a mutual fund	\$1 000
12	For filing an amendment to a preliminary prospectus, prospectus or annual information form	\$250
13	For filing a technical or engineering report with <ul style="list-style-type: none"> (a) a preliminary prospectus, pro forma prospectus, prospectus, annual information form, amendment to a preliminary prospectus or prospectus (b) an application under section 171 of the Act for revocation or variation of a decision in respect of the reactivation of a dormant issuer 	\$500 \$500
14	For filing a notice by an issuer of its intention to offer securities under section 2.1 of National Instrument 45-106 <i>Prospectus and Registration Exemptions</i> of the Act, if the notice includes a rights offering memorandum or circular	\$500
15	For filing an application, other than an application to revoke a cease-trade order in effect for less than 91 days, to the commission or the executive director for a decision under the Act, this regulation, the Rules, another enactment or a policy statement, if no other fee for that filing is prescribed	\$750
16	For filing a report <ul style="list-style-type: none"> (1) (a) Repealed. [B.C. Reg. 225/2009, s. 7.] (b) pursuant to the terms of an order made under section 76 of the Act, or (c) under National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>, the greater of <ul style="list-style-type: none"> (i) \$100, or (ii) 0.03% or, in the case of a money market fund, 0.01%, of the proceeds realized by the issuer from the distribution of the securities described in the report to purchasers in British Columbia (2) Repealed. [B.C. Reg. 225/2009, s. 7.] 	
17	For filing an annual financial statement by a reporting issuer, as required under National Instrument 51-102 <i>Continuous Disclosure Obligations</i> or National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> , if the statement is filed <ul style="list-style-type: none"> (a) within the prescribed time period (b) outside the prescribed time period (c) outside the prescribed time period and the commission or the executive director has ordered, in respect of the failure to file, that trading in the securities of the issuer cease 	\$600 \$800 \$1 100
18	For filing an interim financial statement by a reporting issuer, as required under National Instrument 51-102 <i>Continuous Disclosure Obligations</i> or National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> , if the statement is filed <ul style="list-style-type: none"> (a) within the prescribed time period (b) outside the prescribed time period 	No fee \$200

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Part 7 – Fees

Item	Column 1	Column 2
	(c) outside the prescribed time period and the commission or the executive director has ordered, in respect of the failure to file, that trading in the securities of the issuer cease	\$500
19	For filing a report required under section 87 of the Act, if the statement is filed (a) within the prescribed time period (b) outside the prescribed time period	No fee \$50
20	For filing a take over bid circular or issuer bid circular	\$750
21	For filing an application under section 171 of the Act for revocation or variation of a decision in respect of the reactivation of a dormant issuer	\$2 500
22	For an on-site search of a paper file	\$6
23	For a copy of a record in the public file of the commission, for each page	\$0.50
24	For the certification of a record (a) for the number of pages, up to and including 10, included in the record (b) for each additional page over 10 included in the record	\$10 \$1
25	The fees and charges for an examination or investigation by a person appointed under section 13 or 153 of the Act are an amount equal to the amount paid by the commission for the examination or investigation, not exceeding fees of \$2 000 for each day of the examination or investigation plus disbursements properly incurred for the examination or investigation	
26	The fees and charges for the costs of or related to a compliance review under section 141.1, 141.2 or 141.3 of the Act are (a) \$100 per hour for each person involved in the compliance review (b) disbursements properly incurred by the commission or the executive director or the staff of either of them	
27	The fees and charges for an investigation by a person appointed under section 142 or 147 of the Act are an amount equal to the amount paid by the commission or the minister for the investigation, not exceeding fees of \$2 000 for each day of the investigation plus disbursements properly incurred for the investigation	
28	The fees and charges for the costs of or related to a hearing are (a) \$2 000 for each day or partial day of hearing (b) \$100 per hour for each person for time spent by the commission or the executive director or the staff of either of them (c) disbursements properly incurred by the commission or the executive director or the staff of either of them (d) fees paid to an expert or witness, to a maximum of \$600 per hour for each person involved (e) disbursements properly incurred by an expert retained by the commission (f) fees paid for legal services, to a maximum of \$400 per hour for each person involved (g) disbursements properly incurred in connection with the provision of legal services to the commission	

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Part 7 – Fees

Item	Column 1	Column 2
29	For filing an application for a certificate confirming that a reporting issuer is not in default of (a) filing financial statements required by the Act or the regulations (b) paying prescribed fees and charges	 \$100 \$100
30	For filing an application for an approval of a waiver of the appointment of an auditor under section 179 (3) (b) of the <i>Company Act</i>	\$100
31	For filing an application for a consent to the restoration of a company or extraprovincial company to the register under section 262 (4) (c) of the <i>Company Act</i>	\$100

[en. B.C. Reg. 416/2003, s. 2; am. B.C. Regs. 232/2006, Sch. s. 3; 43/2008, s. 2 (b); 225/2009, ss. 2 to 8; 238/2014, App. D, s. 1.]

23 Repealed. [B.C. Reg. 225/2009, s. 9.]

Fee calculation and filing requirements relating to distributions

- 24 For the purposes of the fee payable under item 10 of the table in section 22,
- (a) if the prospectus relates to securities that are not distributed continuously, in circumstances where National Instrument 44-102 *Shelf Distributions* does not apply, the issuer or securityholder must file
 - (i) with the prospectus, an estimate of the proceeds that will be realized from the distribution under the prospectus to purchasers in British Columbia, accompanied by
 - (A) if the executive director so requires, an advance of the prescribed fee based on the estimate of the proceeds, or
 - (B) in any other case, an undertaking to pay the prescribed fee not more than 30 days after the completion of the distribution under the prospectus, and
 - (ii) not more than 30 days after the completion of the distribution under the prospectus, a notice of the proceeds realized from the distribution under the prospectus to purchasers in British Columbia and, subject to section 25, the notice must be accompanied by the prescribed fee,
 - (b) if the prospectus relates to securities that are distributed continuously, in circumstances where National Instrument 44-102 *Shelf Distributions* does not apply, the issuer or securityholder must file a notice of the proceeds realized from the distribution under the prospectus to purchasers in British Columbia, accompanied by the prescribed fee, on the date a new prospectus relating to the securities is filed,
 - (c) if the prospectus relates to securities that are distributed under National Instrument 44-102 *Shelf Distributions* the issuer or securityholder must file
 - (i) with the base shelf prospectus, an undertaking to pay the prescribed fee

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Part 7 – Fees

- (A) within 5 business days after the end of each month with respect to the securities sold during that month, for securities distributed continuously in circumstances other than through an MTN Program,
 - (B) together with the monthly filing of pricing supplements, for securities distributed continuously through an MTN Program, or
 - (C) within 30 days after the completion of the offering of securities for each tranche, for securities distributed on a delayed basis,
- (ii) a notice stating the proceeds realized in British Columbia accompanied by the prescribed fee
 - (A) not more than 5 business days after the end of each month with respect to the securities sold during that month, for securities distributed continuously in circumstances other than through an MTN Program,
 - (B) together with the monthly filing of pricing supplements, for securities distributed continuously through an MTN Program, or
 - (C) within 30 days after the completion of the offering of securities for each tranche, for securities distributed on a delayed basis, and
- (iii) a notice stating the proceeds realized in British Columbia, accompanied by the required fee, if any, within 30 days after the earlier of
 - (A) the completion of all offerings of securities under the base shelf prospectus, and
 - (B) the date that is 25 months after the date of filing the base shelf prospectus, or
- (d) if the prospectus relates to securities that are distributed under National Instrument 44-103 *Post-Receipt Pricing*, the issuer or securityholder must file
 - (i) with the base PREP prospectus, an undertaking to pay the prescribed fee within 30 days after the completion of the distribution under the supplemented PREP prospectus, and
 - (ii) within 30 days after the completion of the distribution under the supplemented PREP prospectus, a notice stating the proceeds realized in British Columbia accompanied by the required fee.

[en. B.C. Reg. 416/2003, s. 3; am. B.C. Regs. 43/2008, s. 2 (c); 225/2009, s. 10.]

Additional requirement relating to distributions

- 25** If an advance was paid as required under section 24 (a) (i) (A), the notice filed under section 24 (a) (ii) must be accompanied by

B.C. Reg. 196/97**SECURITIES ACT
SECURITIES REGULATION****Part 7 – Fees**

- (a) the amount by which the prescribed fee exceeds the advance, or
- (b) a request for a refund of the amount by which the advance exceeds the prescribed fee.

[en. B.C. Reg. 416/2003, s. 3.]

Discretionary fee reduction

- 26** If the commission or the executive director considers it to be in the public interest, the commission or the executive director may order that

- (a) either or both of items 22 and 23 of the table in section 22
 - (i) be varied by reducing the fee payable, or
 - (ii) do not apply

in respect of a person who is a representative of the media or any class of persons who are representatives of the media, or

- (b) any or all of items 25 through 28 of the table in section 22
 - (i) be varied by reducing the fees and charges payable, or
 - (ii) do not apply.

[en. B.C. Reg. 416/2003, s. 3.]

Incomplete or incorrect filings

- 27** If a record is filed with the commission, the executive director or a designated organization and the record has not been completed in accordance with the Act or this regulation, the commission, the executive director or the designated organization may return the record to the person by whom it has been filed, and a refund of the fee or any part of it paid upon the filing of the record must not be made unless the commission, the executive director or the designated organization otherwise directs.

[en. B.C. Reg. 416/2003, s. 3.]

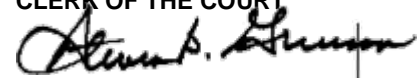
- 28** Repealed. [B.C. Reg. 225/2009, s. 11.]

Members of the Mutual Fund Dealers Association

- 29** Until January 1, 2010, the fees prescribed for item 1 of the table in section 22 do not apply to a person who is a member of the Mutual Fund Dealers Association of Canada.

[en. B.C. Reg. 416/2003, s. 3.]

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CLERK OF THE COURT



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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

BRITISH COLUMBIA SECURITIES)
COMMISSION,)

CASE NO. A-18-771407-C

Plaintiff,)

DEPT NO. XIV

vs.)

MICHAEL PATRICK LATHIGEE,)

Defendant.)

**Transcript of
Proceedings**

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE
**NOTICE OF HEARING RE: MOTION FOR SUMMARY JUDGMENT BY DEFENDANT
LATHIGEE
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND PLAINTIFF'S COUNTER MOTION FOR SUMMARY JUDGMENT**

TUESDAY, DECEMBER 4, 2018

APPEARANCES:

FOR THE PLAINTIFF:

MATTHEW M. PRUITT, ESQ.

FOR THE DEFENDANT:

JAY D. ADKISSON, ESQ.

RECORDED BY: SANDRA ANDERSON, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 4, 2018, 10:08 A.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 MR. ADKISSON: Good morning, Your Honor. Jay Adkisson
5 for defendant Lathigee.

6 THE COURT: Okay.

7 MR. PRUITT: Good morning, Your Honor. Matthew Pruitt
8 on behalf of the plaintiff. With me is a representative of my
9 client, Will Roberts.

10 THE COURT: Good morning. Before we begin, I must
11 tell you that this is a fascinating reading for me, and I --
12 this case is very significant, in my view. And one thing that I
13 thought of, which I rarely do on a -- on this type of a motion,
14 you know, a motion for summary judgment, is ask for findings of
15 fact and conclusions of law. But because it's a dispositive
16 motion, I am going to require that, okay. I just -- I don't
17 want to forget to tell you that.

18 MR. PRUITT: Okay.

19 THE COURT: All right. And then I'd like to go ahead
20 and hear. We have defendant's motion for summary judgment, and
21 plaintiff's motion for summary judgment. Who would like to go
22 first?

23 MR. ADKISSON: I think it was our initial motion, Your
24 Honor.

25 THE COURT: Okay. Very good.

1 MR. PRUITT: That's fine, Your Honor.

2 THE COURT: One moment, please.

3 MR. ADKISSON: Well, if it may please the Court, my
4 argument is almost going to be no argument to the extent that if
5 Your Honor has read this, Your Honor knows this is very
6 complicated material. I'm not sure it lends itself very well to
7 oral argument as opposed to the parties researching, making
8 submissions to the Court, the Court being able to sit down, take
9 a deep breath, and read through it. And so with that --

10 THE COURT: Well, I have read through it, but it's --
11 it's very detailed and I'd like to hear a little bit more about
12 it. With respect to the Kokesch case.

13 MR. ADKISSON: The Kokesch case?

14 THE COURT: Uh-huh.

15 MR. ADKISSON: Oh, certainly. Well, the Kokesch case
16 is a case that was decided in 2017 --

17 THE COURT: Right.

18 MR. ADKISSON: -- by Justice Sotomayor.

19 THE COURT: Uh-huh.

20 MR. ADKISSON: It involved -- it involved disgorgement
21 in the SEC context. It was -- it came up in relation to a
22 statute of limitation, which is a little bit different, but in
23 that Justice Sotomayor goes through these long -- or this fairly
24 substantial analysis and goes through these five or six elements
25 that start ending somewhere about 12 -- on page 12 of her

1 opening brief.

2 And Justice Sotomayor goes out and, bang, bang, bang,
3 disgorgement will be a penalty under U.S. law if such and such
4 is met. We go through those factors in depth. We apply the
5 facts to that.

6 Most important I would direct Your Honor to -- if
7 there's anything that's -- that's salient in this case, I would
8 suggest to Your Honor that it's found in pages 12 to -- I'm
9 sorry, 14 to 16 of her opening brief. Because there it lays out
10 that in the underlying case the court said the purpose of this
11 is to deter future conduct by taking the money away from the
12 wrongdoer.

13 The case went up on appeal. The appeal was known as
14 Punian (phonetic). It's a little bit odd in British Columbia
15 because apparently when they have like cases, they group them
16 all together and they hear the cases at once even though they
17 involve disparate parties.

18 So you have this Punian case that comes up that also
19 involves [indiscernible]. The court in that case comes out and
20 says the purpose of this disgorgement order is to take money
21 away and deter the wrongdoer, keep them from doing something
22 again in the future.

23 Prior to the time we filed out motion for summary
24 judgment there was discovery, and in this discovery -- or,
25 rather, there was an exchange of expert opinions and their

1 expert comes out and says, and it's set forth in our brief, the
2 purpose of this is to deter and to keep the person from -- from
3 running their scheme again. That's the purpose of disgorgement.

4 I would say that's salient because that goes to the
5 heart of the matter, it goes to the heart of the Huntington
6 versus Attrill test, it goes to the City of Oakland, it goes to
7 Kokesch. And so I would merely ask the Court to focus on that.

8 THE COURT: Huntington 1892; right?

9 MR. ADKISSON: Huntington 1892. Yes, Your Honor.

10 THE COURT: Right. And is that still a solid case? I
11 mean, I know it hasn't been overturned, but reading it
12 yesterday, it's really not quite on point.

13 MR. ADKISSON: Well, Huntington -- Huntington is --
14 Huntington is a strange case. It's one of those things that I
15 would say it's on three legs, but not four, to put it. Now, it
16 did involve a security case. It did involve --

17 THE COURT: I know.

18 MR. ADKISSON: -- a case in Maryland.

19 THE COURT: In a different --

20 MR. ADKISSON: I think --

21 THE COURT: It had a slightly different approach.

22 MR. ADKISSON: It did have -- it did have a slightly
23 different approach. I think the importance of Huntington is
24 more that it was a seminal case in the area. And then all these
25 other cases basically took the principle of law that's set forth

1 there, which is you don't -- you don't enforce a judgment that's
2 what's known as jure imperii, the imperial judgment, one in
3 favor of the state. And that, of course, is carried through to
4 its progeny.

5 Now, there have been criticisms on various grounds of
6 Huntington over the years. There's no doubt about that.
7 There's been various law professors have written articles about
8 -- about the case. There have been snide comments by appellate
9 judges over the years, but, nonetheless, it has survived and it
10 has survived here in Nevada in the City of Oakland case.

11 THE COURT: Right. Okay.

12 MR. ADKISSON: So if the Court has -- if the Court has
13 any other questions, I'd be glad to hear them, but I really have
14 no other argument.

15 THE COURT: I do have a question. With respect to --
16 I don't want to -- let's see. I forget the name of the British
17 Columbia Securities. Is it the BCSC?

18 MR. ADKISSON: The BCSC.

19 THE COURT: My understanding is that the difference
20 between our SEC and the British Columbia BCSC is that the SEC
21 doesn't -- is not required to provide the restitution to the
22 victims, it can go to the general fund or some other fund. But
23 the BCSC's judgment, I think we have three different judgments
24 in this case. One is purely for restitution. I forget which --
25 which amount it was, the 20 or 30 million.

1 MR. ADKISSON: No, Your Honor. I think what we're
2 talking about here is we're talking about the 21.7 which is
3 purely disgorgement.

4 THE COURT: And that -- and that is required to go to
5 the victims as -- as restitution; correct?

6 MR. ADKISSON: Well, it works the same -- it works the
7 same to some extent between the securities commissioner and
8 British Columbia and the SEC, and that is when they take in
9 money, what they do is they make it available to victims for
10 people to make a claim. So in both cases that procedure works
11 the same. They say, look, we have a pot of money, you make
12 claims. The difference is where it goes after --

13 THE COURT: To the educational fund.

14 MR. ADKISSON: Right. There's -- in British Columbia
15 it goes -- and not just educational.

16 THE COURT: Or something like that.

17 MR. ADKISSON: There was educational and some other
18 purposes.

19 THE COURT: Right.

20 MR. ADKISSON: In the SEC it does go into -- it does
21 go into a general fund.

22 THE COURT: Okay.

23 MR. ADKISSON: That is correct. That -- that is a
24 difference, but I would suggest to Your Honor that that's a --
25 that's a -- that's a difference that isn't particularly germane

1 to the law because the purpose is -- you don't focus on the
2 compensation so much as you focus on the purpose and the purpose
3 is deterrence. And it's that purpose of deterrence that's
4 critically important in these cases.

5 THE COURT: Understood. But -- but are there any --
6 any type of similar regulations that don't also include
7 deterrence or public policy that would be -- you know, make the
8 victims whole? I mean, I think the entire scheme of our
9 jurisprudence is based on sound public policy. And so I don't
10 know if you can really -- you know, I was thinking about this a
11 lot last evening, and I don't know if you can really -- I must
12 tell you that I used to prosecute securities --

13 MR. ADKISSON: I was aware, Your Honor, yes.

14 THE COURT: Okay. So -- so under -- understanding
15 that, then this -- there is deterrence involved, of course. But
16 what about the issue of remuneration for the victims?

17 MR. ADKISSON: Well, it's clear, Your Honor, under --

18 THE COURT: Making them whole.

19 MR. ADKISSON: Well, that goes to the --

20 THE COURT: Or as whole as possible.

21 MR. ADKISSON: I don't want to speak over him, but --

22 THE COURT: Yeah.

23 MR. ADKISSON: -- it's clear that under the Canadian
24 cases, under both the underlying decision, the court of appeals,
25 other Canadian cases have been cited and their expert witnesses

1 that compensation is not a goal. So what happens is is that
2 there's deterrence. The deterrence has a disgorgement, it takes
3 the money in.

4 Now, once the money is in, what do you do with it?
5 You don't just take it out and throw a big party. You make it
6 available for people. But, again, the important thing is is
7 that the deterrence in this -- there's not a compensatory
8 purpose to the act. Again, all the cases that have been cited
9 by both parties, and most importantly their expert witness that
10 say that compensation is not a purpose of the act.

11 THE COURT: Okay.

12 MR. ADKISSON: And so that has to be taken into
13 account.

14 THE COURT: Okay. Thank you.

15 MR. ADKISSON: Thank you, Your Honor.

16 THE COURT: Counsel.

17 MR. PRUITT: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. PRUITT: We're asking the Court to recognize a
20 \$21.7 million judgment against the defendant, which represents
21 the amount that he fraudulently raised from 698 investors. An
22 additional judgment for administrative penalties was assessed
23 for \$15 million, but we're not asking the Court to recognize
24 that judgment at this time.

25 The court of appeals for British Columbia observe that

1 the magnitude of the fraud perpetrated in this particular case
2 is among the largest in British Columbia history. In regards to
3 recognition of this judgment, we're not here to retry this
4 judgment. We're here to have it recognized.

5 THE COURT: Understood.

6 MR. PRUITT: The uniform act, the recognition of
7 foreign country money judgments uniform act under NRS 17.700
8 states that the Nevada courts shall recognize a foreign country
9 judgment to which such statutes apply. Defendant has narrowed
10 this argument for us, kindly, and is focusing only on NRS
11 17.740(2)(b) which states that the uniform act does not apply to
12 a foreign country judgment for a fine or other penalty.

13 This statute means that if the Court decides that the
14 judgment at hand is a penalty, then that would not be the end of
15 the analysis, but instead, according to NRS 17.820, the Court
16 could then look to the principles of comity. But this judgment
17 is not a penalty. It's clear from the papers already provided
18 to the Court that the established law in British Columbia holds
19 that a disgorgement judgment like the one at hand is not a
20 penalty.

21 While British Columbia courts stop short of calling
22 disgorgement compensatory, they definitely hold that it is not
23 punitive. And the Court can read that in the Cosby case that we
24 provided, Section 25. In fact, disgorgement doesn't neatly fit,
25 you know, the penalty or compensatory categories that are

1 inherently brought up in the Huntington case.

2 But its effects are far more compensatory than not,
3 and, in fact, instead of being compensatory or -- or punitive,
4 it's restitutionary in its effects. In fact, the existing law
5 in the United States set forth in Kokesch holds that disgorgement
6 is, and I quote, a form of restitution measured by the
7 defendant's wrongful gain.

8 As discussed previously, the plaintiff's judgment
9 against defendant is for \$21.7 million, which is exactly the
10 amount which defendant has been held to have fraudulently
11 raised. So that judgment is dollar for dollar disgorgement, not
12 for profits, but for the amounts actually fraudulently taken
13 from individual investors.

14 While the Kokesch court found that the SEC judgment or
15 disgorgement is often not compensatory, this finding was based
16 on the fact that the SEC disgorgement judgment is paid to the
17 district court, and then the district court has complete
18 discretion on how that money would be distributed.

19 As Your Honor mentioned earlier, where the difference
20 is with the Canadian law is that -- that the Canadian system
21 doesn't have that amount of discretion. There's a set forth
22 process for handling claims, and if those claims are made, they
23 must be -- those investors must be paid back using this money.
24 Every penny collected from this judgment will be restored to
25 investors.

1 Under the U.S. law, this judgment is certainly
2 restitution and its effects are mandated to be compensatory as
3 opposed to the SEC's disgorgement, which the mandate is not
4 there. It's discretionary. The Fourth Restatement of Foreign
5 Relations states that a judgment in favor of a foreign state
6 awarding restitution for the benefit of private persons is not
7 penal.

8 So because this is under U.S. law, a restitutionary
9 judgment, then under the Fourth Restatement of Foreign
10 Relations, that restitutionary judgment is not penal and the
11 Court must recognize the judgment pursuant to that act as --
12 pursuant to NRS 17.700 et al because it is not penal. But even
13 if this Court holds that it is penal --

14 THE COURT: I'm sorry to interrupt --

15 MR. PRUITT: Yeah.

16 THE COURT: -- but I want to ask you right now before
17 I forget.

18 MR. PRUITT: Sure.

19 THE COURT: So is the distinction -- I've read
20 everything, but I want to really be clear. Is the distinction
21 between penal or not penal, okay, or private versus public, is
22 that how it was -- how the nature of the entire case, if it was
23 a penal case, then I understand the restitution in British
24 Columbia goes straight --

25 MR. PRUITT: Right.

1 THE COURT: -- to the victims, the portion, the 21
2 million.

3 MR. PRUITT: Yeah.

4 THE COURT: But does it make a difference of how the
5 case begins in this instance?

6 MR. PRUITT: It doesn't, Your Honor. In fact, if we
7 look to the Fourth Restatement --

8 THE COURT: I did see that.

9 MR. PRUITT: -- there is a section on it that talks
10 about, you know, criminal cases and how even if the judgment
11 stems from a criminal case, it can still be valid.

12 THE COURT: Thank you.

13 MR. PRUITT: But, Your Honor, even if this were a
14 penal judgment, that does not stop this Court from being able to
15 recognize this judgment under the principles of comity. Under
16 the Third Restatement of Foreign Relations it states that
17 non-recognition of a penalty is, excuse me, permitted, but not
18 required.

19 It is under this Court's discretion to exercise comity
20 as a principle under which it can grant -- give effect to the
21 decisions of a foreign nation out of deference and respect. And
22 for the reasons set forth in our motion, it's crucial that this
23 Court extend comity, not only for the reasons of reciprocity,
24 but also to protect the citizens of Nevada.

25 All ten Canadian provinces and the SEC are waiting to

1 see what this Court does with this case. The effects of this
2 case have potentially wide-reaching effects and this Court's
3 finding can create -- it could potentially create a safe haven
4 for people coming out of Canada who have committed fraud to come
5 and escape to Nevada.

6 Defendant's victims are also waiting to see what will
7 happen here. Many of them are entirely dependent on the BCSC
8 for any hope of recovery of what they've lost. So for all of
9 these reasons we ask that this Honorable Court recognize
10 plaintiff's judgment here in Nevada under the statute, or in the
11 alternative under comity.

12 THE COURT: I have one other question for you.

13 MR. PRUITT: Sure.

14 THE COURT: With respect to the City of Oakland case,
15 the Nevada Supreme Court, this is 2011.

16 MR. PRUITT: Yes.

17 THE COURT: That was essentially -- you know, it
18 looked to the Huntington case.

19 MR. PRUITT: Right.

20 THE COURT: Actually, the dissent discusses -- I'm an
21 underliner --

22 MR. PRUITT: Yeah.

23 THE COURT: -- as you can see. The dissent actually
24 discusses something, and I know -- I mean, it's the dissent, but
25 -- let me find it because I thought -- Justice Pickering wrote

1 this dissent. There is something here that discusses -- just
2 one moment.

3 MR. PRUITT: Sure.

4 MR. ADKISSON: I believe it's the last paragraph, Your
5 Honor, of his dissent.

6 THE COURT: Just a moment. It's essentially talking
7 about sister judgments --

8 MR. PRUITT: Uh-huh.

9 THE COURT: -- for other states.

10 MR. PRUITT: Okay.

11 THE COURT: That area where she discusses that.

12 MR. PRUITT: Sure.

13 THE COURT: And then she says something -- essentially
14 what the dissent says is that while those judgments should be
15 recognized, there -- there still may be -- there may not be an
16 exception for foreign judgments.

17 MR. PRUITT: Okay.

18 THE COURT: And I know it's the dissent, but, I mean,
19 I think it -- I think this is a pretty strong dissent.

20 MR. PRUITT: Well, and that's -- you know, that's
21 offered under the assumption that the judgment you're dealing
22 with is a penalty in the first place.

23 THE COURT: Right.

24 MR. PRUITT: And it's important to understand that in
25 Oakland it dealt with a municipal penalty --

1 THE COURT: Right. It did.

2 MR. PRUITT: -- you know.

3 THE COURT: And the sign; right?

4 MR. PRUITT: Right.

5 THE COURT: This was the -- yes.

6 MR. PRUITT: And there -- arguably, there's no
7 individual people that were hurt by this.

8 THE COURT: Correct.

9 MR. PRUITT: But it was a damage to the state itself,
10 and -- and the money was going to the state itself. And this is
11 very different where we have the money going to individual
12 investors, and -- and it's under U.S. law restitutionary --
13 under Kokesch itself acknowledges that disgorgement is
14 restitution. And if we take the Fourth Restatement as -- as
15 valid, as well, then disgorgement or restitution is not a
16 penalty.

17 THE COURT: Okay. Thank you.

18 MR. PRUITT: Thank you, Your Honor.

19 THE COURT: Counsel.

20 MR. ADKISSON: Yes, Your Honor. I just wanted to
21 address the last point about the Fourth Restatement because that
22 came up in their reply and we didn't have a chance to address
23 it. Basically, what happened is we wrote our opening brief in
24 October. In October, I'm not sure if it was before or after
25 opening brief, the American Law Institute released the

1 Restatement Fourth of Foreign Relations.

2 Now, I've got to be honest with Your Honor. I usually
3 don't look for the Restatement of Foreign Relations to come out
4 in new versions. It's not something I'm looking for. So
5 anyhow, we didn't know it.

6 What happened is that they renumbered Section 483 to
7 Section 489. If the Court decides to adopt the Restatement
8 Fourth, it's very important to realize there was a significant
9 change between 483 and 489. 489, which is the new version,
10 basically says a U.S. court -- U.S. courts do not recognize
11 certain types of foreign judgment, so it gets away from the
12 permissive element that was in 483. So it's a much stronger
13 deal.

14 Now, there is -- there is some commentary in there
15 about restitution that if the Court looks, there's -- there's --
16 the way it works is that the Restatement sets out in the section
17 and there's comment, and the comment is sort of like a law
18 review article, and then there's the reporters notes that
19 basically explain what's in the comments.

20 If the Court looks at that, the Court will see that
21 the -- the statement regarding restitution comes not from any
22 U.S. cases, but it comes from a 2004 Australian case and a 2009
23 case out of Great Britain. So the statement that's in there is
24 not based on U.S. law at all.

25 I would also note that although it's hard to tell, the

1 way that the American Law Institute works, and I've been on
2 uniform law committee so I'm fairly familiar with this, is that
3 they typically do their research before they start drafting, and
4 then they spend a year or so sort of polishing up what they've
5 done.

6 It does not appear that when the court -- when the ALI
7 got around to drafting that that they were aware of the Kokesh
8 decision which I think would have made all the difference in the
9 world. So I would merely urge extreme caution. The parties
10 have well briefed this. I hope the Court takes it under
11 advisement and -- and issues a good order and opinion, as I
12 expect the Court would.

13 I would merely conclude with the Court mentioned
14 earlier that *Huntington v. Attrill* was decided in 1892. The
15 following year the U.S. Supreme Court decided a case called
16 *Hedden versus Nix*. And in *Hedden versus Nix*, it involved
17 tomatoes. And basically what it said was it said a tomato under
18 U.S. law was a vegetable. There had been a big dispute up to
19 that point.

20 Now, that's what U.S. law says. In other countries,
21 tomatoes are considered fruit. In the United States, we have a
22 Supreme Court that says it's a vegetable. At the end of the
23 day, Your Honor, this is a tomato case. Is this -- is this
24 disgorgement, is it considered to be something that furthers the
25 public interest or not under the -- under the *Huntington* test,

1 but it really is a tomato case when you get down to it. So I'll
2 leave the Court with that, Your Honor. Thank you.

3 THE COURT: Okay. Great. Thank you.

4 Anything else, counsel?

5 MR. PRUITT: Yeah, I think it's -- I don't think the
6 people that drafted the Fourth Restatement were ignorant of
7 Kokesch. It came in 2017. The restatement was published this
8 year in 2018. They certainly had access to it and I don't think
9 the Court should make its decision on that basis. The -- even
10 the Third Restatement, though, talks about how it -- principles
11 that are similar and -- and the authors, I think, of the -- of
12 the Third Restatement would also find that it was not -- that
13 disgorgement is not a penalty.

14 But, in fact, I mean, in Kokesch itself cited the Third
15 Restatement in saying that disgorgement was a -- was a
16 restitutionary judgment. It did find that in that particular
17 case, which was about -- not about a foreign judgment but it was
18 about statute of limitations, that for the purpose of the
19 statute of limitations it was --

20 THE COURT: Are you talking about --

21 MR. PRUITT: -- a penalty.

22 THE COURT: -- the Hedden case?

23 MR. PRUITT: I'm talking about the Kokesch case.

24 THE COURT: Oh, okay.

25 MR. PRUITT: So the Court in Kokesch, you know, they

1 found that disgorgement was a penalty for the purposes of that
2 statute of limitations.

3 THE COURT: Right.

4 MR. PRUITT: But I sincerely doubt that they would
5 extend that, especially with their language of calling it a
6 restitution to foreign judgments. So does Your Honor have any
7 other questions?

8 THE COURT: No. Again, I would like findings of fact
9 and conclusions of law in Microsoft Word from the parties. Is
10 two weeks sufficient time?

11 MR. ADKISSON: Yes, Your Honor.

12 MR. PRUITT: Yes, Your Honor.

13 MR. ADKISSON: I do have a question for the Court on
14 that point. What would the Court envision the statement of
15 facts looking like? Because this is a case that arises on a
16 very odd posture.

17 THE COURT: I'm going to leave that to your creativity
18 and imagination. It sounds like you're very well versed in the
19 area. And just --

20 MR. ADKISSON: And does the Court want separate
21 submissions, or does the Court want parties to attempt to agree
22 on them?

23 THE COURT: No, you can find separate -- I'd like them
24 separate, please.

25 MR. PRUITT: Okay.

1 MR. ADKISSON: Okay. Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. PRUITT: Thank you, Your Honor.

4 THE COURT: So two weeks would be?

5 THE CLERK: December 18th.

6 THE COURT: December 18th. Okay. Thank you.

7 MR. ADKISSON: Thank you, Your Honor.

8 THE COURT: Have a good day.

9 MR. PRUITT: Thank you, Your Honor.

10 MR. ADKISSON: Thank you, Your Honor.

11 THE COURT: It was really well briefed, both parties.

12 (Proceedings concluded at 10:34 a.m.)

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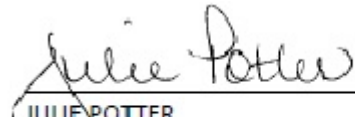
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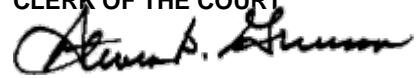
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STATE OF NEVADA
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY
Hon. Adriana Escobar, District Judge

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE,

Defendant.

Case No. A-18-771407-C {Dept. 14}

**STATEMENT OF FACTS IN SUPPORT
OF DEFENDANT LATHIGEE'S
MOTION FOR SUMMARY JUDGMENT**

Hearing Held On December 4, 2018

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**STATEMENT OF FACTS IN SUPPORT OF DEFENDANT
LATHIGEE'S MOTION FOR SUMMARY JUDGMENT**

Page 1

British Columbia Securities Commission v. Lathigee, et al., Case No. A-18-771407-C {Dept. 14}

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Defendant, Michael Patrick Lathigee ("Lathigee"), hereby submits his Statement of Facts in support of his own Motion for Summary Judgment, and also in opposition to the BSCS's Counter-motion for Summary Judgment.

//

I. FACTS CHRONOLOGICALLY ORGANIZED

1. Section 161(1)(g) of the British Columbia Securities Act ("BCSA") provides *in toto*:

161(1) If the commission or the executive director **considers it to be in the public interest**, the commission or the executive director, after a hearing, may order one or more of the following: ... (g) if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;"

Poonian, Lath.Memo.Ex# 2, pg. 27 at ¶ 83 (emphasis added).

A. THE LIABILITY HEARING

2. The decision of the liability portion of the BCSC's hearing, a/k/a the "Liability Decision" was issued on July 8, 2014. Liability.Dec., BCSC.Opp.Ex# 13 at pg. 1 ¶ 1.
3. A fair summary of the facts stated in the Liability Decision is this:
 - a) Lathigee, and his business partner Earle Douglas Pasquill, owed and controlled a number of companies collectively referred to as "Freedom Investment Club (FIC Group). Liability.Dec., BCSC.Opp.Ex# 13 at pg. 3 ¶ 5;
 - b) FIC Group's primary business was real estate development in Canada. Liability.Dec., BCSC.Opp.Ex# 13 at pg. 4 ¶ 11;

- 1 c) FIC Group obtained a \$22.1 million¹ credit facility with TD Bank on May
2 31, 2007 for the Genesis (real estate) project. Liability.Dec.,
3 BCSC.Opp.Ex# 13 at pg. 10 ¶ 51;
- 4 d) The TD Bank credit facility required FIC group to keep its investment
5 portfolio at a minimum of \$9 million during the life of the Genesis project.
6 Liability.Dec., BCSC.Opp.Ex# 13 at pg. 10 ¶ 55;
- 7 e) The global real estate crash reduced FIC group's investment portfolio to
8 \$4.9 million by April, 2008. Liability.Dec., BCSC.Opp.Ex# 13 at pg. 10 ¶
9 59;
- 10 f) Around that same period of time, contractors on the Genesis project were
11 owed \$9.6 million. Liability.Dec., BCSC.Opp.Ex# 13 at pg. 18 ¶ 107;
- 12 g) In other words, the Genesis project had become a "financial disaster" for
13 FIC Group. Liability.Dec., BCSC.Opp.Ex# 13 at pg. 24 ¶ 131.
- 14 h) FIC Group's situation grew worse with a \$2.2 million tax bill.
15 Liability.Dec., BCSC.Opp.Ex# 13 at pg. 30 ¶ 150.
- 16 i) FIC Group started shuffling money around internally to attempt to meet its
17 most demanding obligations.² Liability.Dec., BCSC.Opp.Ex# 13 at pg. 32
18 ¶ 156.
- 19 j) Ultimately, FIC Group sought to raise \$10 million in new moneys to
20 discharge existing obligations. Liability.Dec., BCSC.Opp.Ex# 13 at pg. 33
21 ¶ 160.
- 22 k) FIC Group did not disclose its true financial condition to new investors.
23 Liability.Dec., BCSC.Opp.Ex# 13 at pp. 48-49 ¶ 258.

26 ¹ The unit of currency involved was Canadian dollars. All references herein to monetary amounts
27 in Canada shall be in Canadian dollars unless otherwise noted.

28 ² A classic example of "robbing Peter to pay Paul" — and a practice that would not be unfamiliar
to many real estate companies in the Las Vegas environs during the same time period.

- 1) The BCSC found that Lathigee made misrepresentations to investors that were "untrue and grossly misleading". BCSC.Opp.Ex# 13 at pp. 49 ¶ 260.
- m) "This was borne out by how the money was used. None of it was spent on anything that was going to produce cash flow for these investors. Half of it, \$5 million, was used to top up the 076 investment portfolio and to pay the Genesis contractors so the liens could be removed. Another \$3.4 million was split between funds returned to PIC Foreclosure and funds held in reserve to pay interest on the promissory notes themselves. That left \$1.6 million, which went to overhead and third-party payments." Liability.Dec., BCSC.Opp.Ex# 13 at pg. 49 ¶ 263.
- n) "The evidence shows that of the \$9.9 million raised from investors, FIC Foreclosure spent \$1.4 million to acquire foreclosure properties, and another \$751,000 on rental properties and tax liens." BCSC.Opp.Ex# 13 at pg. 59 ¶ 324.
- o) "FIC Foreclosure transferred the rest, about \$7.8 million, to other FIC Group companies to fund, among other things:
- payments due on third-party loans
 - payment of outstanding trades invoices on Genesis and other properties owned by other FIC Group companies
 - payment towards the 076 tax liability
 - payment of salaries and other overhead expenses of the FIC Group"
- BCSC.Opp.Ex# 13 at pg. 59 ¶ 325.
- p) **There was no finding in the Liability Decision that Lathigee personally receive any of the moneys raised from new investors that subsequently formed the basis of the Disgorgement Order;** to the contrary, the Liability Decision makes clear that that those moneys were applied internally within FIC Group for the benefit of all investors (albeit that the older investors

thereby suffered smaller losses to the disadvantage of the new investors).
BCSC.Opp.Ex# 13.

B. THE DISGORGEMENT ORDER

4. The decision of the "sanctions portion" of the BCSC's hearing, a/k/a the "Disgorgement Order", was issued on March 16, 2015. Disg.Ord., Lath.Memo.Ex# 1 at pg. 1 ¶ 1. Relevant excerpts from the Disgorgement Order next follow.
 5. "Orders under sections 161(1) and 162 are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37." Disg.Ord., Lath.Memo.Ex# 1 at ¶ 5.
 6. The Disgorgement Order states at ¶ 6 that the relevant considerations in determining whether to order sanctions include:
 - "the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct";
 - "the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets"; and
 - "the need to deter those who participate in the capital markets from engaging in inappropriate conduct".
- Disg.Ord., Lath.Memo.Ex# 1 at ¶ 6.
7. "The harm to the reputation and integrity of our capital markets is also clear." Disg.Ord., Lath.Memo.Ex# 1 at ¶ 10.
 8. "The sanctions we impose must be sufficient to ensure that the respondents and others will be deterred from engaging in similar misconduct." Disg.Ord., Lath.Memo.Ex# 1 at ¶ 26.
 9. "We find that it is in the public interest to order the respondents to pay the full amount obtained as a result of their fraud." Disg.Ord., Lath.Memo.Ex# 1 at ¶ 49.
 10. The Disgorgement Order required "under section 161(1)(g) [of the British Columbia Securities Act, RSBC, 1996, c. 418], Lathigee pay to the Commission \$21.7 million, being

the total amount obtained, directly or indirectly, as a result of his contraventions of the Act . . . "³ Disg.Ord., Lath.Memo.Ex# 1 at ¶ 62(b)(iv), pg. 12.

11. **The Disgorgement Order makes no finding that Lathigee personally received any benefit from the moneys raised from new investors.** Disg.Ord., Lath.Memo.Ex# 1.

C. REGISTRATION OF THE DISGORGEMENT ORDER

12. "On April 15, 2015, relying on Section 163(1) of the BC Securities Act, the BC Securities Commission registered the sanctions decision in the British Columbia Supreme Court. Section 163(1) allows the Securities Commission to file a decision with the BC Supreme Court. This does not involve an adjudication on the merits but is a registration process to facilitate the collection of monetary orders made by BCSC Panels;" Op.Sullivan, Lath.Memo.Ex# 4 at pg. 3 ¶ 3.

D. THE POONIAN DECISION (LATHIGEE APPEAL)

13. On May 31, 2017, the Court of Appeal for British Columbia issued its opinion in *Poonian v. BCSC (including Lathigee v. BCSC)*, 2017 BCCA 207 (2017). *Poonian*, Lath.Memo.Ex# 2.
14. The *Poonian* decision repeatedly states that disgorgement under § 161(1)(g) is intended to further the public interest:
- a) "The Executive Director argues the issues raised by s. 161(1)(g) are distinct from those under s. 155.1(b) because an order may be made, in the opening language of s. 161(1), 'If the commission or the executive director considers it to be in the public interest...' For its part, s. 155.1 does not require the court to consider the public interest. The Executive Director argues this

³ The BCSC also ordered that "under section 162, Lathigee pay an administrative penalty of \$15 million". Disg.Ord., Lath.Memo.Ex# 1 at ¶ 62(b)(v) [sic], pg. 12. The BCSC has not sought to register this part of its judgment against Lathigee.

signals a different 'statutory context'. *Poonian*, Lath.Memo.Ex# 2, pg. 12 ¶ 34, (underline in original);

- b) "Unlike the Copyright Board, the Commission is a 'discrete and special administrative regime', charged under the *Act* to protect the public interest in relation to investors and capital markets." *Poonian*, Lath.Memo.Ex# 2, pg. 12 ¶ 34.
- c) "Disgorgement is a specific tool, and the Commission must not, in the name of the public interest, use that tool in such a way as to extend it beyond its specific, permissible purpose." *Poonian*, Lath.Memo.Ex# 2, pg. 36, at ¶ 112;
- d) "To be clear, the issue to be resolved on this appeal is not whether a disgorgement order would be in the public interest, nor is the issue whether there has been non-compliance with the *Act*. Those requisite elements of a § 161(1)(g) order are not before this Court." *Poonian*, Lath.Memo.Ex# 2, pg. 14 at ¶ 40;
- e) "I recognize the Commission's important public interest mandate that informs the Commission's exercise of discretion to make an order under s. 161(1), which provides a host of tools to the Commission to use alone or in combination. I also acknowledge the Commission's superior expertise in determining what would be in the public interest, including how the *Act* should be interpreted to further those policy considerations: *Re Cartaway Resources Corp.*, 2004 SCC 26 at para. 46." *Poonian*, Lath.Memo.Ex# 2, pg. 16 ¶ 49;
- f) "Principles that apply to all sanction orders are applicable to section 161(1)(g) orders, including: a) a sanction is discretionary and may be applied where the panel determines it to be in the public interest;" *Poonian*, Lath.Memo.Ex# 2, pg. 20 ¶ 58 *quoting Re Michaels*, 214 BCSECCOM 457 (2014);

- g) "The Executive Director stresses the important and specialized role of the Commission in crafting sanctions that are in the public interest in the particular circumstances of the case before it." *Poonian*, Lath.Memo.Ex# 2, pg. 22 ¶ 67;
- h) "I agree with and adopt the two-step approach identified by Vice Chair Cave in *SPYru*⁴ at paras. 131–32: * * * [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence." *Poonian*, Lath.Memo.Ex# 2, pg. 47 at ¶ 144; and
- i) "Of course, it is also for the Commission to determine whether it is in the public interest to make any order under s. 161(1)(g)." *Poonian*, Lath.Memo.Ex# 2, pg. 51 at ¶ 165.

15. The *Poonian* decision affirms that a purpose of § 161(1)(g) is deterrence:

- a) "The taking away of any amounts obtained or payment or loss avoided deprives a person who fails to comply of any benefit. Therefore, the person is deterred from non-compliance. In that sense, s. 161(1)(g) also has a deterrence purpose. This purpose is consistent with the *Act*'s overarching remedial and protective nature." *Poonian*, Lath.Memo.Ex# 2, pg. 27 at ¶ 82;
- b) "[S]ummarizing the underlying principles of disgorgement disgorgement reflects the equitable policy designed to remove all money unlawfully obtained by a respondent so that the respondent does not retain any financial benefit from breaching the Act." (internal emphasis, quotation marks and citation omitted). *Poonian*, Lath.Memo.Ex# 2, pg. 32 at ¶ 102; *see also Poonian*, Lath.Memo.Ex# 2, pg. 33 at ¶ 105 (same effect);

⁴ *Re SPYru Inc.*, 2015 BSCECCOM 452 (2015).

- c) "The Commission has a broad arsenal of sanctions to enable it to discharge its public interest mandate. Each tool, however, takes a specific form to achieve a specific purpose. Disgorgement is a specific tool, and the Commission must not, in the name of the public interest, use that tool in such a way as to extend it beyond its specific, permissible purpose. Its purpose is to prevent wrongdoers from retaining amounts obtained from their wrongdoing." *Poonian*, Lath.Memo.Ex# 2, pg. 36 ¶ 112;
- d) "The public interest is not unlimited. In my opinion, disgorgement may not go further than required to prevent each wrongdoer from retaining an amount obtained, directly or indirectly, as a result of the wrongdoing. Nor does deterrence require more." *Poonian*, Lath.Memo.Ex# 2, pg. 38 ¶ 120; and
- e) "The purpose of s. 161(1)(g) is to deter persons from contravening the *Act* by removing the incentive to contravene, i.e., by ensuring the person does not retain the "benefit" of their wrongdoing." *Poonian*, Lath.Memo.Ex# 2, pg. 46 at ¶ 143(1).

16. The *Poonian* decision repeatedly states that the disgorgement under § 161(1)(g) is not compensatory:

- a) "It is clear, in my opinion, that the purpose of s. 161(1)(g) is neither punitive nor compensatory. This view is held consistently among the various decisions of the Commission and the securities commissions of other provinces". (citations omitted). *Poonian*, Lath.Memo.Ex# 2, pg. 23 at ¶ 70;
- b) "In my view, it does not follow that just because moneys collected under certain sections may be used for 'compensation', the sections giving rise to orders to pay those moneys (ss. 155.1(b), 157(1)(b), 161(1)(g), and 162) have a compensatory purpose. * * *[C]onsidering the extensive case law discussing the purpose of s. 161 (1)(g) and its nature as a sanction, I would endorse the view of the Commission in *Michaels* at para. 42, which

concluded that 'the sanction does not focus on compensation or restitution or act as a punitive or deterrent measure over and above compelling the respondent to pay any amounts obtained from the contravention(s) of the Act'." *Poonian*, Lath.Memo.Ex# 2, pg. 24 ¶ 75;

- c) "While "compensation" may well be a possible effect of a s. 161(1)(g) order, I cannot say that is its purpose. Any analysis of restitution would arise under s. 15.1, not s. 161(1)(g)." *Poonian*, Lath.Memo.Ex# 2, pg. 25 at ¶ 76;
- d) "This conclusion is also consistent with the observation that generally the power to order a person who has contravened the Act to pay compensation or restitution is reserved for the courts (ss. 155.1(a) and 157(1) (i) and 0)). While a victim may receive money from the s. 15.1 mechanism, that is distinct from the power to order restitution. First, notice to the public under this 'expeditious' method is only made *after* money has been received through an order. If no money is received, the mechanism is not engaged. Second, the victim has no enforceable order against the wrongdoer, whereas ss. 155.2(1) and (3) give the person to whom the court awards compensation all the usual enforcement tools available for court orders." *Poonian*, Lath.Memo.Ex# 2, pg. 25 ¶ 77 (*italics in original*);
- e) "I also find persuasive Vice Chair Cave's explanation in *Streamline* (in dissent) as to why compensation or restitution is not the purpose of as. 161(1)(g) order:
- "[77] Compensation or restitution to investors is not the purpose of a disgorgement order. Only the BC Supreme Court can order compensation or restitution under the Act, pursuant to sections 155.1(a) or 157(1)(i). Since these two provisions specifically refer to compensation and restitution, it would be incorrect to interpret section 161(1)(g) as also being a compensation or restitution provision.

"[78] The wording of section 161 (1)(g) shows it is not a compensation or restitution provision. The goal of restitution is to restore the victim to his or her original position, which requires the court to consider victims' losses. In contrast, section 161(1)(g) requires the panel to consider the amount obtained as a result of misconduct. These are two different things.

"[79] For example, a court order for compensation or restitution may include more than what an investor actually invested (and a respondent obtained), such as interest payments or loss of opportunity. A respondent would not have obtained these amounts as a result of misconduct and consequently an order under section 161(1)(g) that included these amounts would be broader than what that section allows.

"I note further the Commission is expressly prohibited from including loss of opportunity and interest on the loss in determining an applicant's loss under the Part 3, s. 15.1 claims mechanism: *Securities Regulation*, s. 7 .4(3)." *Poonian*, Lath.Memo.Ex# 2, pg. 25-6 ¶ 78;

- f) "I also agree with the decisions of securities commissions in British Columbia and across the country concluding s. 161(1)(g), or its counterparts, is not compensatory in nature". *Poonian*, Lath.Memo.Ex# 2, pg. 26 at ¶ 80
- g) Disgorgement "is not a compensation mechanism for victims of the wrongdoing." (internal quotation marks and citation omitted). *Poonian*, Lath.Memo.Ex# 2, pg. 32 at ¶ 102
- h) Disgorgement "is not to punish or compensate, although those aims are achievable by other means in the *Act*, or in conjunction with other sections of the *Act*." *Poonian*, Lath.Memo.Ex# 2, pg. 36, at ¶ 112; and

- i) "The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention." *Poonian*, Lath.Memo.Ex# 2, pg. 46 at ¶ 143(2).

17. The *Poonian* decision recognizes that any disgorged funds remaining, after all claims have been made, are not returned to the defendant but may be used by the BCSC for educational purposes: *See Poonian*, Lath.Memo.Ex# 2, pp. 23-4 at ¶ 72 ("Sections 15 and 15.1 of the Act address what the Commission may do with funds received under s. 161(1)(g). * * * After the requisite period of time has expired, the Commission may use any remaining funds only for educating securities market participants and the public about investing, financial matters or the operation or regulation of securities markets (s. 15(3)).").

18. In response to the Poonians argument (at ¶ 84) that they should be allowed to reduce their disgorgement order by their trading and other expenses incurred, i.e., the disgorgement order should have been limited to their net profits, the *Poonian* court responded:

I reject this argument. The words of the provision do not support a "profit" interpretation. The words the Legislature chose, "any amount obtained", refer to any amount received. They do not contemplate any deductions. If the Legislature had intended to import a profit element, it could have used the word "profit", or "net", or some other language that connotes allowance for losses or expenses.

Poonian, *Poonian*, Lath.Memo.Ex# 2, pg. 28 at ¶ 85.

19. This point is stated again at ¶ 93 of the *Poonian* decision: "In sum, I conclude s. 161(1)(g) does not require the amount obtained to be 'profit' or that there be a 'netting' or deduction of expenses, costs, or of amounts paid to the Commission by other persons." *Poonian*, Lath.Memo.Ex# 2, pg. 30 at ¶ 93.

20. The *Poonian* court noted that such deductions would not be allowed in insider trading cases, *Poonian*, Lath.Memo.Ex# 2, pp. 28-29 at ¶¶ 85-86.

E. OPINION OF BCSC EXPERT JOHNSON

21. The BCSC's expert witness, Mr. Gordon R. Johnson, gave his opinion that "Section 161(1)(g) of the *Securities Act* is not a penalty in British Columbia law." Op.Johnson, Lath.Memo.Ex# 3, at pg. 5. Mr. Johnson's analysis included the following statements.
22. Mr. Johnson stated that the purpose of disgorgement is not — repeat, not — to compensate investors:
- a) "Its [disgorgement] purpose is to prevent wrongdoers from retaining amounts obtained from their wrongdoing. It is not to punish or compensate . . ." Op.Johnson, Lath.Memo.Ex# 3, at pg. 3.
 - b) "I disagree with the suggestion that because compensation is not the objective of Section 161(1)(g) therefor disgorgement is not an objective. Disgorgement and compensation are different concepts." Op.Johnson, Lath.Memo.Ex# 3, at pg. 5.
23. Mr. Johnson included as support for his opinion a long passage from the British Columbia Court of Appeals in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207 (B.C.App., 2017), which internally quotes a similar opinion, *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 201 SCC 37 at ¶ 42 (CanLII, 2001), arising from a similar law in Ontario:
- "The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets. * * * The focus of the regulatory law is on the protection of societal interests, not the punishment of an individual's moral faults . . ."
- Op.Johnson, Lath.Memo.Ex# 3 at pp. 3-4.
24. Mr. Johnston further stated that: "I believe that by this language the Court of Appeal in *Poonian* was accepting the accuracy of the following reasoning from the British Columbia Securities Commission's decision in *Streamline Properties Inc. (Re)*, 2015 BCSECCOM 66 as follows:

"92 Section 161(l)(g) should be read to refer to the financial benefits respondents continue to have at the time the order is made. Amounts returned to investors should be deducted from the amount of the disgorgement order.

"93 This is consistent with the purpose of a disgorgement order, namely to deprive a respondent of wrongly obtained benefits. If an order requires disgorgement of a benefit a respondent no longer has, then it will not serve the purpose of removing wrongly obtained benefits, and instead will simply be a penalty."⁵

Op.Johnson, Lath.Memo.Ex# 3 at pp. 3-4.

F. OPINION OF LATHIGEE EXPERT SULLIVAN⁶

25. Lathigee's expert witness, Mr. Patrick J. Sullivan, gave his opinion that "an Enforcement Order under Section 161(1)(g) of the BC *Securities Act* does involve the imposition of a penalty." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 1. Mr. Sullivan's opinion included the following statements.

26. "While commonly referred to as disgorgement orders, an Enforcement Order under Section 161(1)(g) of the BC *Securities Act* is not intended as a compensation mechanism." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 1.

⁵ This is a very important point, *i.e.*, even under Canadian law, if disgorgement exceeds the benefits retained by the defendant, then the excess is in the nature of a penalty. Notably, the BCSC has *never* established that Lathigee personally benefitted, but rather the entire gist of the Liability Portion of the BCSC's judgment, BCSC.Resp.Ex# 13, is that the securities fraud occurred because investors were solicited to put money into a venture that was financially struggling post-2008 crash, and funds were diverted from newer investments to existing, failing investments. The point being that, even under Canadian law, because Lathigee received nothing personally, the totality of the disgorgement was a penalty as to him.

⁶ Lathigee did not initially rely upon the Sullivan expert opinion in support of his own Motion for Summary Judgment, but does rely upon it in opposition to the BCSC's Cross-Motion for Summary Judgment.

27. "Compensation is dealt with elsewhere in the Act under different legislative provisions", Op.Sullivan, Lath.Memo.Ex# 4 at pg. 1.
28. "Section 161(1)(g) like the other sub-sections of Section 161(1), is intended to achieve deterrence." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 1.
29. "Following findings of liability in an administrative proceeding, the BCSC Panel can order a variety of administrative orders under Section 161 or an administrative penalty under Section 162 of the BC Securities Act. The pre-conditions to the ordering of orders under Sections 161 and 162 of the BC Securities Act are a determination that the person has contravened a provision of the BC Securities Act and a consideration of the public interest." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 5.
30. "The title of Section 161 of the BC Securities Act is 'Enforcement Orders'. The title of the section is instructive as are the types of orders a BCSC Panel can make pursuant to Section 161." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 5.
31. "With respect to the title, it is clear that the purpose of the orders is to assist in enforcement of the *Securities Act*. While a BCSC Panel's jurisdiction under Section 161 of the BC *Securities Act* is limited to sanctions that are protective and preventative, specific and general deterrence are appropriate considerations in imposing penalties. In other words, a key goal of orders made pursuant to Section 161 is to prevent the Respondent from committing similar acts in the future and to prevent others from committing those acts." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 5.
32. "When taken in context, it is clear that Section 161 (1) containing [sic] a series of provisions designed to penalize those who violate the Act in order to prevent future misconduct while the goal of the provisions is not to 'punish' the remedies available to prevent future misconduct are clearly penalties." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 5.
33. "As was the case in this matter, administrative Hearings under the BC *Securities Act* are typically broken down into two stages: a liability stage and a sanctions stage. It is at the 'sanctions' stage that the penalties under Sections 161 and 162 can be imposed. In my opinion, sanctions are essentially penalties." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 6.

34. "In particular, the case law is now clear that Section 161 (1)(g) is specifically intended to deter persons from contravening the *BC Securities Act* by removing the incentive to contravene the *BC Securities Act* by ensuring the person does not retain the 'benefit' of their wrongdoing. In other words, the goal is deterrence and deterrence is an objective achieved by imposing appropriate penalties. Op.Sullivan, Lath.Memo.Ex# 4 at pg. 6.
35. "The case [law] also establishes that the purpose of Section 161(1)(g) of the *BC Securities Act* is not to compensate the public or victims of the contravention. The Court of Appeal made it clear that to the extent compensation is an objective, it is achieved through other mechanisms in the *BC Securities Act* in the same way that if criminal prosecution is an objective, it can be achieved through other provisions in the *BC Securities Act*. In other words, while Section 161(1)(g) has been called a disgorgement provision, its purpose is not disgorgement." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 6.

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II. FACTS SUBSTANTIVELY ORGANIZED

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A. DISGORGEMENT ARISES FROM PUBLIC LAW AND FURTHERS A PUBLIC INTEREST

36. Section 161(1)(g) of the British Columbia Securities Act is a public law which is implicated if, and only if, "the commission or the executive director considers it to be in the public interest". *Poonian*, Lath.Memo.Ex# 2, pg. 27 at ¶ 83 (emphasis added).
37. "The harm to the reputation and integrity of our capital markets is also clear." Disg.Ord., Lath.Memo.Ex# 1 at ¶ 10.
38. The *Poonian* decision repeatedly states that disgorgement under § 161(1)(g) is intended to further the public interest:
- a) "The Executive Director argues the issues raised by s. 161(1)(g) are distinct from those under s. 155.1(b) because an order may be made, in the opening language of s. 161(1), 'If the commission or the executive director considers it to be in the public interest...' For its part, s. 155.1 does not require the court to consider the public interest. The Executive Director argues this

signals a different 'statutory context'. Poonian, Lath.Memo.Ex# 2, pg. 12 ¶ 34, (underline in original);

- b) "Unlike the Copyright Board, the Commission is a 'discrete and special administrative regime', charged under the *Act* to protect the public interest in relation to investors and capital markets." *Poonian*, Lath.Memo.Ex# 2, pg. 12 ¶ 34;
- c) "To be clear, the issue to be resolved on this appeal is not whether a disgorgement order would be in the public interest, nor is the issue whether there has been non-compliance with the *Act*. Those requisite elements of a § 161(1)(g) order are not before this Court." *Poonian*, Lath.Memo.Ex# 2, pg. 14 at ¶ 40;
- d) "I recognize the Commission's important public interest mandate that informs the Commission's exercise of discretion to make an order under s. 161(1), which provides a host of tools to the Commission to use alone or in combination. I also acknowledge the Commission's superior expertise in determining what would be in the public interest, including how the *Act* should be interpreted to further those policy considerations: *Re Cartaway Resources Corp.*, 2004 SCC 26 at para. 46." *Poonian*, Lath.Memo.Ex# 2, pg. 16 ¶ 49;
- e) "Principles that apply to all sanction orders are applicable to section 161(1)(g) orders, including: a) a sanction is discretionary and may be applied where the panel determines it to be in the public interest;" *Poonian*, Lath.Memo.Ex# 2, pg. 20 ¶ 58 quoting *Re Michaels*, 214 BCSECCOM 457 (2014);
- f) "The Executive Director stresses the important and specialized role of the Commission in crafting sanctions that are in the public interest in the particular circumstances of the case before it." *Poonian*, Lath.Memo.Ex# 2, pg. 22 ¶ 67;

- g) "Disgorgement is a specific tool, and the Commission must not, in the name of the public interest, use that tool in such a way as to extend it beyond its specific, permissible purpose." *Poonian*, Lath.Memo.Ex# 2, pg. 36, at ¶ 112;
- h) "I agree with and adopt the two-step approach identified by Vice Chair Cave in *SPYru*⁷ at paras. 131–32: * * * [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence." *Poonian*, Lath.Memo.Ex# 2, pg. 47 at ¶ 144; and
- i) "Of course, it is also for the Commission to determine whether it is in the public interest to make any order under s. 161(1)(g)." *Poonian*, Lath.Memo.Ex# 2, pg. 51 at ¶ 165.

39. The BCSC's expert witness, Mr. Gordon R. Johnson, *see Plaintiff's NRCP 16.1(a)(2) Expert Disclosures*, Op.Johnson, Lath.Memo.Ex# 3 hereto, included as support for his opinion a long passage from the British Columbia Court of Appeals in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207 (B.C.App., 2017), which internally quotes a similar opinion, *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 201 SCC 37 at ¶ 42 (CanLII, 2001), arising from a similar law in Ontario:

"The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets. * * * The focus of the regulatory law is on the protection of societal interests, not the punishment of an individual's moral faults . . ."

Op.Johnson, Lath.Memo.Ex# 3 at pp. 3-4.

⁷ *Re SPYru Inc.*, 2015 BSCECCOM 452 (2015).

40. Lathigee's expert, Mr. Sullivan, opines that a consideration of the public interest is required under § 161: "The pre-conditions to the ordering of orders under Sections 161 and 162 of the BC *Securities Act* are a determination that the person has contravened a provision of the BC *Securities Act* and a consideration of the public interest." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 5.

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**B. DISGORGEMENT IS IMPOSED TO DEPRIVE THE DEFENDANT OF WRONGFUL PROFITS AND
DETER FUTURE VIOLATIONS**

41. The Disgorgement Order states at ¶ 5 that: "Orders under sections 161(1) and 162 are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37." Disg.Ord., Lath.Memo.Ex# 1 at ¶ 5.
42. The Disgorgement Order states at ¶ 6 that the relevant considerations in determining whether to order sanctions include:
- "the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct";
 - "the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets"; and
 - "the need to deter those who participate in the capital markets from engaging in inappropriate conduct".
- Disg.Ord., Lath.Memo.Ex# 1 at ¶ 6.
43. "The sanctions we impose must be sufficient to ensure that the respondents and others will be deterred from engaging in similar misconduct." Disg.Ord., Lath.Memo.Ex# 1 at ¶ 26.
44. The *Poonian* decision affirms that a purpose of § 161(1)(g) is deterrence:
- a) "The taking away of any amounts obtained or payment or loss avoided deprives a person who fails to comply of any benefit. Therefore, the person is deterred from non-compliance. In that sense, s. 161(1)(g) also has a

deterrence purpose. This purpose is consistent with the *Act*'s overarching remedial and protective nature." *Poonian*, Lath.Memo.Ex# 2, pg. 27 at ¶ 82;

- b) "[S]ummarizing the underlying principles of disgorgement disgorgement reflects the equitable policy designed to remove all money unlawfully obtained by a respondent so that the respondent does not retain any financial benefit from breaching the Act." (internal emphasis, quotation marks and citation omitted). *Poonian*, Lath.Memo.Ex# 2, pg. 32 at ¶ 102; *see also Poonian*, Lath.Memo.Ex# 2, pg. 33 at ¶ 105 (same effect);
- c) "The Commission has a broad arsenal of sanctions to enable it to discharge its public interest mandate. Each tool, however, takes a specific form to achieve a specific purpose. Disgorgement is a specific tool, and the Commission must not, in the name of the public interest, use that tool in such a way as to extend it beyond its specific, permissible purpose. Its purpose is to prevent wrongdoers from retaining amounts obtained from their wrongdoing." *Poonian*, Lath.Memo.Ex# 2, pg. 36 ¶ 112;
- d) "The public interest is not unlimited. In my opinion, disgorgement may not go further than required to prevent each wrongdoer from retaining an amount obtained, directly or indirectly, as a result of the wrongdoing. Nor does deterrence require more." *Poonian*, Lath.Memo.Ex# 2, pg. 38 ¶ 120; and
- e) "The purpose of s. 161(1)(g) is to deter persons from contravening the *Act* by removing the incentive to contravene, i.e., by ensuring the person does not retain the "benefit" of their wrongdoing." *Poonian*, Lath.Memo.Ex# 2, pg. 46 at ¶ 143(1).

45. The opinion of the BCSC's own expert, Mr. Johnson, repeatedly makes clear that the purpose of the British Columbia law under which disgorgement is authorized is to deprive the defendant of wrongful profits and deter future violations, and thereby force compliance with British Columbia's security laws:

**STATEMENT OF FACTS IN SUPPORT OF DEFENDANT
LATHIGEE'S MOTION FOR SUMMARY JUDGMENT**

British Columbia Securities Commission v. Lathigee, et al., Case No. A-18-771407-C (Dept. 14)

- 1 a) "The British Columbia Court of Appeal expresses the purpose of the Section
2 161(1)(g) remedy most clearly at paragraph 111 of the *Poonian* decision.
3 There the Court makes it clear that the purpose is not to punish or to
4 compensate. The purpose of the remedy is to deter non-compliance by
5 removing the prospect of receiving and retaining moneys from non-
6 compliance." Op.Johnson, Lath.Memo.Ex# 3, at pp. 2-3.
- 7 b) "Disgorgement is a specific tool, and the Commission must not, in the name
8 of public interest, use that tool in such a way as to extend it beyond its
9 specific, permissible purpose. Its purpose is to prevent wrongdoers from
10 retaining amounts obtained from their wrongdoing." Op.Johnson,
11 Lath.Memo.Ex# 3, at pg. 3.
- 12 c) "The 'disgorgement' remedy has the purpose of removing the incentive for
13 non-compliance." Op.Johnson, Lath.Memo.Ex# 3, at pg. 4.
- 14 46. Lathigee's expert, Mr. Sullivan, opines that the purpose of the § 161(1)(g) remedy is
15 deterrence:
- 16 a) "Section 161(1)(g) like the other sub-sections of Section 161(1), is intended
17 to achieve deterrence." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 1.
- 18 b) "With respect to the title, it is clear that the purpose of the orders is to assist
19 in enforcement of the *Securities Act*. While a BCSC Panel's jurisdiction
20 under Section 161 of the BC *Securities Act* is limited to sanctions that are
21 protective and preventative, specific and general deterrence are appropriate
22 considerations in imposing penalties. In other words, a key goal of orders
23 made pursuant to Section 161 is to prevent the Respondent from committing
24 similar acts in the future and to prevent others from committing those acts."
25 Op.Sullivan, Lath.Memo.Ex# 4 at pg. 5.
- 26 c) "In particular, the case law is now clear that Section 161 (1)(g) is
27 specifically intended to deter persons from contravening the BC *Securities*
28 *Act* by removing the incentive to contravene the BC *Securities Act* by

ensuring the person does not retain the 'benefit' of their wrongdoing. In other words, the goal is deterrence and deterrence is an objective achieved by imposing appropriate penalties. Op.Sullivan, Lath.Memo.Ex# 4 at pg. 6.

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C. DISGORGEMENT IS NOT COMPENSATORY

47. The *Poonian* decision repeatedly states that the disgorgement under § 161(1)(g) is not punitive or compensatory:

- a) "It is clear, in my opinion, that the purpose of s. 161(1)(g) is neither punitive nor compensatory. This view is held consistently among the various decisions of the Commission and the securities commissions of other provinces". (citations omitted). *Poonian*, Lath.Memo.Ex# 2, pg. 23 at ¶ 70;
- b) "In my view, it does not follow that just because moneys collected under certain sections may be used for 'compensation', the sections giving rise to orders to pay those moneys (ss. 155.1(b), 157(1)(b), 161(1)(g), and 162) have a compensatory purpose. * * *[C]onsidering the extensive case law discussing the purpose of s. 161 (1)(g) and its nature as a sanction, I would endorse the view of the Commission in *Michaels* at para. 42, which concluded that 'the sanction does not focus on compensation or restitution or act as a punitive or deterrent measure over and above compelling the respondent to pay any amounts obtained from the contravention(s) of the Act'." *Poonian*, Lath.Memo.Ex# 2, pg. 24 ¶ 75;
- c) "While "compensation" may well be a possible effect of a s. 161(1)(g) order, I cannot say that is its purpose. Any analysis of restitution would arise under s. 15.1, not s. 161(1)(g)." *Poonian*, Lath.Memo.Ex# 2, pg. 25 at ¶ 76;
- d) "This conclusion is also consistent with the observation that generally the power to order a person who has contravened the Act to pay compensation or restitution is reserved for the courts (ss. 155.1(a) and 157(1) (i) and 0)). While a victim may receive money from the s. 15.1 mechanism, that is

1 distinct from the power to order restitution. First, notice to the public under
2 this 'expeditious' method is only made *after* money has been received
3 through an order. If no money is received, the mechanism is not engaged.
4 Second, the victim has no enforceable order against the wrongdoer, whereas
5 ss. 155.2(1) and (3) give the person to whom the court awards compensation
6 all the usual enforcement tools available for court orders." *Poonian*,
7 Lath.Memo.Ex# 2, pg. 25 ¶ 77 (italics in original);

8 e) "I also find persuasive Vice Chair Cave's explanation in *Streamline* (in
9 dissent) as to why compensation or restitution is not the purpose of as.
10 161(1)(g) order:

11 "[77] Compensation or restitution to investors is not the purpose of a
12 disgorgement order. Only the BC Supreme Court can order
13 compensation or restitution under the Act, pursuant to sections
14 155.1(a) or 157(1)(i). Since these two provisions specifically refer
15 to compensation and restitution, it would be incorrect to interpret
16 section 161(1)(g) as also being a compensation or restitution
17 provision.

18 "[78] The wording of section 161 (1)(g) shows it is not a compensation
19 or restitution provision. The goal of restitution is to restore the
20 victim to his or her original position, which requires the court to
21 consider victims' losses. In contrast, section 161(1)(g) requires the
22 panel to consider the amount obtained as a result of misconduct.
23 These are two different things.

24 "[79] For example, a court order for compensation or restitution may
25 include more than what an investor actually invested (and a
26 respondent obtained), such as interest payments or loss of
27 opportunity. A respondent would not have obtained these amounts
28 as a result of misconduct and consequently an order under section

161(1)(g) that included these amounts would be broader than what that section allows.

"I note further the Commission is expressly prohibited from including loss of opportunity and interest on the loss in determining an applicant's loss under the Part 3, s. 15.1 claims mechanism: *Securities Regulation*, s. 7.4(3)." *Poonian*, Lath.Memo.Ex# 2, pg. 25-6 ¶ 78;

f) "I also agree with the decisions of securities commissions in British Columbia and across the country concluding s. 161(1)(g), or its counterparts, is not compensatory in nature". *Poonian*, Lath.Memo.Ex# 2, pg. 26 at ¶ 80

g) Disgorgement "is not a compensation mechanism for victims of the wrongdoing." (internal quotation marks and citation omitted). *Poonian*, Lath.Memo.Ex# 2, pg. 32 at ¶ 102

h) Disgorgement "is not to punish or compensate, although those aims are achievable by other means in the *Act*, or in conjunction with other sections of the *Act*." *Poonian*, Lath.Memo.Ex# 2, pg. 36, at ¶ 112; and

i) "The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention." *Poonian*, Lath.Memo.Ex# 2, pg. 46 at ¶ 143(2).

48. The *Poonian* also decision recognizes that any disgorged funds remaining, after all claims have been made, are not returned to the defendant but may be used by the BCSC for educational purposes: *See Poonian*, Lath.Memo.Ex# 2, pp. 23-4 at ¶ 72 ("Sections 15 and 15.1 of the Act address what the Commission may do with funds received under s. 161(1)(g). * * * After the requisite period of time has expired, the Commission may use any remaining funds only for educating securities market participants and the public about investing, financial matters or the operation or regulation of securities markets (s. 15(3)).").
49. The BCSC's own expert, Mr. Johnson, himself points out that the purpose of disgorgement is not — repeat, not — to compensate investors:

- c) "Its [disgorgement] purpose is to prevent wrongdoers from retaining amounts obtained from their wrongdoing. It is not to punish or compensate . . ." Op.Johnson, Lath.Memo.Ex# 3, at pg. 3.
- d) "I disagree with the suggestion that because compensation is not the objective of Section 161(1)(g) therefor disgorgement is not an objective. Disgorgement and compensation are different concepts." Op.Johnson, Lath.Memo.Ex# 3, at pg. 5.

50. Lathigee's expert, Mr. Sullivan, opines that the purpose of the § 161(1)(g) remedy is not compensatory:

- a) "While commonly referred to as disgorgement orders, an Enforcement Order under Section 161(1)(g) of the *BC Securities Act* is not intended as a compensation mechanism." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 1.
- b) "Compensation is dealt with elsewhere in the Act under different legislative provisions", Op.Sullivan, Lath.Memo.Ex# 4 at pg. 1.
- c) "The case [law] also establishes that the purpose of Section 161(1)(g) of the *BC Securities Act* is not to compensate the public or victims of the contravention. The Court of Appeal made it clear that to the extent compensation is an objective, it is achieved through other mechanisms in the *BC Securities Act* in the same way that if criminal prosecution is an objective, it can be achieved through other provisions in the *BC Securities Act*. In other words, while Section 161(1)(g) has been called a disgorgement provision, its purpose is not disgorgement." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 6.

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D. DISGORGEMENT CAN EXCEED WRONGFUL PROFITS

51. In response to the Poonians argument (at ¶ 84) that they should be allowed to reduce their disgorgement order by their trading and other expenses incurred, i.e., the disgorgement order should have been limited to their net profits, the *Poonian* court responded:

STATEMENT OF FACTS IN SUPPORT OF DEFENDANT LATHIGEE'S MOTION FOR SUMMARY JUDGMENT

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I reject this argument. The words of the provision do not support a “profit” interpretation. The words the Legislature chose, “any amount obtained”, refer to any amount received. They do not contemplate any deductions. If the Legislature had intended to import a profit element, it could have used the word “profit”, or “net”, or some other language that connotes allowance for losses or expenses.

Poonian, *Poonian*, Lath.Memo.Ex# 2, pg. 28 at ¶ 85.

52. This point is stated again at ¶ 93 of the *Poonian* decision: "In sum, I conclude s. 161(1)(g) does not require the amount obtained to be 'profit' or that there be a 'netting' or deduction of expenses, costs, or of amounts paid to the Commission by other persons." *Poonian*, Lath.Memo.Ex# 2, pg. 30 at ¶ 93.

53. The *Poonian* court noted that such deductions would not be allowed in insider trading cases, *Poonian*, Lath.Memo.Ex# 2, pp. 28-29 at ¶¶ 85-86.

54. Mr. Johnston further stated that: "I believe that by this language the Court of Appeal in *Poonian* was accepting the accuracy of the following reasoning from the British Columbia Securities Commission's decision in *Streamline Properties Inc. (Re)*, 2015 BCSECCOM 66 as follows:

"92 Section 161(l)(g) should be read to refer to the financial benefits respondents continue to have at the time the order is made. Amounts returned to investors should be deducted from the amount of the disgorgement order.

"93 This is consistent with the purpose of a disgorgement order, namely to deprive a respondent of wrongly obtained benefits. If an order requires disgorgement of a benefit a respondent no longer has, then it will not serve the purpose of removing wrongly obtained benefits, and instead will simply be a penalty."⁸

Op.Johnson, Lath.Memo.Ex# 3 at pp. 3-4.

⁸ See fn. 3, *supra*.

E. THE DISGORGEMENT ORDER IS A PENALTY

55. The BCSC's expert witness, Mr. Gordon R. Johnson, opines that "Section 161(1)(g) of the *Securities Act* is not a penalty in British Columbia law." Op.Johnson, Lath.Memo.Ex# 3, at pg. 5.

56. Lathigee's expert, Mr. Sullivan, opines that sanctions (including disgorgement) under § 161(1)(g) remedy are in the nature of a penalty under British Columbia law:⁹

- a) Lathigee's expert witness, Mr. Patrick J. Sullivan, gave his opinion that "an Enforcement Order under Section 161(1)(g) of the BC *Securities Act* does involve the imposition of a penalty." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 1. Mr. Sullivan's opinion included the following statements.
 - b) "The title of Section 161 of the BC *Securities Act* is 'Enforcement Orders'. The title of the section is instructive as are the types of orders a BCSC Panel can make pursuant to Section 161." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 5.
 - c) "When taken in context, it is clear that Section 161 (1) containing [sic] a series of provisions designed to penalize those who violate the *Act* in order to prevent future misconduct while the goal of the provisions is not to 'punish' the remedies available to prevent future misconduct are clearly penalties." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 5.
 - d) "As was the case in this matter, administrative Hearings under the BC *Securities Act* are typically broken down into two stages: a liability stage

⁹ There is thus a factual dispute between the parties' experts as to whether disgorgement under § 161(1)(g) of the British Columbia *Securities Act* is in the nature of a penalty. The salient issue then becomes the conflict-of-laws issue that has been previously briefed by the parties as to whether the disgorgement order is to be classified under British Columbia or U.S./Nevada law. If British Columbia law governs the classification, then it is submitted that there is a material issue of fact on this ultimate issue which precludes the entry of summary judgment for either party. By contrast, if U.S./Nevada law governs the classification, then the competing expert opinions as to this ultimate issue under British Columbia law are in the nature of a *non-sequitur* and thus not material.

1 and a sanctions stage. It is at the 'sanctions' stage that the penalties under
2 Sections 161 and 162 can be imposed. In my opinion, sanctions are
3 essentially penalties." Op.Sullivan, Lath.Memo.Ex# 4 at pg. 6.
4

5 Respectfully submitted this 18th day of December, 2018, by:
6

7
8 /s/ Jay D. Adkisson
9 Jay D. Adkisson
10 Counsel for Defendant
11 Michael Patrick Lathigee

12 **CERTIFICATE OF SERVICE**

13 The following signature certifies that, in addition to service by e-filing, on the date of e-filing, a
14 full, true, and correct copy of the above and foregoing document was deposited in the U.S. Mail,
15 with correct first-class postage affixed thereto, and address to counsel for the Plaintiff, British
16 Columbia Securities Commission, to wit:
17

18 Kurt R. Bonds, SBN 6228
19 Matthew M. Pruitt, SBN 12474
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21 6602 Grand Montecito Parkway, Suite 200
22 Las Vegas, NV 89149
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24 /s/ Jay D. Adkisson
25 Jay D. Adkisson
26
27
28

Fax

To: Jay D. Adkisson, Esq.**From:** Kimber Foster**Company:****Company:****Fax:** 1-877-698-0678**Fax:****Phone:****Phone:****Email:** KFoster@AlversonTaylor.com**Pages:** 22**Date:** 12/19/2018**Notes:**

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Hon. Adriana Escobar
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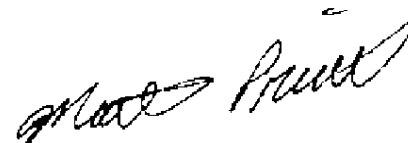
Re: BCSC v. Lathigee
Case No. A-18-771407-C
Findings of Fact Conclusions of Law
Our File No. 25513

Dear Hon. Judge Escobar,

Please find enclosed our proposed Findings of Fact Conclusions of Law, as requested at the hearing on the Parties' competing motions for summary judgment. A physical copy of the same has also been submitted to your chambers. Thank you.

Very truly yours,

ALVERSON TAYLOR & SANDERS



Matthew M. Pruitt, Esq.

MMP/kf

Enclosure

Cc: Jay D. Adkisson, Esq. - Fax: 877-698-0678

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DISTRICT COURT

CLARK COUNTY, NEVADA

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BRITISH COLUMBIA SECURITIES
COMMISSION,

CASE NO.: A-18-771407-C

DEPT. NO.: XIV

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT**

This matter came before the Court pursuant to Defendant's Motion for Summary Judgment, and Plaintiff's Countermotion for Summary Judgment. At a hearing on December 4, 2018 Matthew Pruitt, Esq. appeared on behalf of Plaintiff, and Jay Adkisson, Esq. appeared on behalf of Defendant.

The Court having reviewed the pleadings and papers on file, being fully advised in the premises, and having heard the arguments of counsel, for reasons stated on the record and good cause appearing therefor, enters the following findings of fact and conclusions of law in this matter.

FINDINGS OF FACT

On March 30, 2018, Plaintiff, BRITISH COLUMBIA SECURITIES COMMISSION, commenced this action by filing a Complaint for recognition of foreign country judgment under the Recognition of Foreign-Country Money Judgments (Uniform Act), found at NRS 17.700 et. seq., and under Comity, naming MICHAEL PATRICK LATHIGEE as a Defendant. Defendant subsequently

answered the Complaint on April 9, 2018, and filed an Amended Answer on June 6, 2018. Defendant filed a Motion for Summary Judgment on October 19, 2018, to which Plaintiff filed its Opposition and Countermotion on November 9, 2018.

A. The Underlying Judgment

On March 16, 2015, the British Columbia Securities Commission (the “BCSC”) rendered a decision (the “Decision”) against Defendant pursuant to a hearing under British Columbia law and pursuant to sections 161(1) and 162 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the “BC *Securities Act*”).¹ On April 1, 2015, and pursuant to section 163 of the BC *Securities Act*,² the BCSC registered the Decision with the British Columbia Supreme Court, by which the Decision was deemed to be a judgment of the British Columbia Supreme Court (the “Judgment”).³ The Judgment was appealed by Defendant, but the appeal was denied by the Court of Appeal for British Columbia on May 31, 2017.⁴ The time for appeal has expired and no appeal is pending.⁵

The Judgment is for disgorgement of \$21,700,000.00 CAD, and corresponds to the \$21,700,000.00 CAD which Defendant was found to have fraudulently raised from 698 investors.⁶ Defendant was also assessed with an administrative penalty of \$15 Million CAD, which was also registered with the Supreme Court of British Columbia, but the Plaintiff is not requesting that this related judgment be recognized by this Court.⁷

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¹ Pltff’s Opp & CM Ex 1, p.1.

² *Id.*

³ *Id.*

⁴ Pltff’s Opp & CM Ex 16, BCSC_001996 & BCSC_002047.

⁵ Pltff’s Opp & CM Ex 1, p.1.

⁶ *Id.* at Decision § 2.

⁷ *Id.* at Decision § 62(b)(iv).

a. The Details

In a decision dated July 8, 2014 (the “Liability Findings”), the BCSC found that Defendant, Mr. Lathigee, together with others (often referred to as the FIC Group), perpetrated a fraud, contrary to section 57(b) of the BC Securities Act when:

- (a) he raised \$21.7 million (CAD) from 698 investors without disclosing to those investors important facts about FIC Group’s financial condition; and
- (b) he raised \$9.9 million (CAD) from 331 investors for the purpose of investing in foreclosure properties, and instead used most of the funds to make unsecured loans to other members of the FIC Group, the proceeds of which were used at least in part to pay salaries and other overhead expenses of the FIC Group.⁸

On March 16, 2015, the Commission issued the Decision which included disgorgement orders against the following parties in the following amounts:

- a. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC REAL ESTATE PROJECTS LTD., jointly and severally, \$9,800,000
- b. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC FORECLOSURE FUND LTD., jointly and severally, \$9,900,000
- c. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, WBIC CANADA LTD., jointly and severally, \$2,000,000

On April 15, 2015, the Decision was registered in the Vancouver Registry of the British Columbia Supreme Court, pursuant to section 163 of the BC *Securities Act* as a judgment of that Court, under registry file no. L-150117.⁹

The amount of the Judgment ordered to be payable by Michael Patrick Lathigee, jointly and severally with other defendants, excluding administrative penalties, is \$21,700,000 CAD.¹⁰ That

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⁸ Pltff’s Opp & CM Ex 1, Judgment, p.1 § 2.

⁹ Pltff’s Opp & CM Ex 1, Judgment.

¹⁰ *Id* at p.9 §§ 43, 46, and 49, and p.13 § 62(d).

amount of the Judgment was granted for disgorgement of funds fraudulently obtained from investors, pursuant to section 161(1)(g) of the BC Securities Act.¹¹ Specifically the tribunal stated:

“We find we have the authority to order disgorgement against the individual respondents in this case, up to \$21.7 million, the full amount obtained by fraud.”¹²

“The amounts obtained from investors need not be traced to them specifically and we find that \$21.7 million was obtained, directly or indirectly, as a result of their individual contraventions of the Act.”¹³

“Each respondent’s misconduct contributed to the raising of the \$21.7 million fraudulently. We find that it is in the public interest to order the respondents to pay the full amount obtained as a result of their fraud.”¹⁴

Prior to the proceedings which led to the Judgment, Defendant was served with a Notice of Hearing, dated March 1, 2012, which set forth the allegations and gave a date, time, and location for a hearing.¹⁵ Defendant’s counsel, H. Roderick Anderson of Harper Grey LLP, accepted service of the notice on March 8, 2012, and then appeared for all respondents at the March 20, 2012 hearing.¹⁶ Defendant continued to be represented by such counsel throughout the proceedings of the case.¹⁷ In fact Defendant was afforded at least six days of trial wherein his counsel was able to call and cross-examine witnesses, and present evidence.¹⁸ There is no question regarding personal jurisdiction over Defendant, as Defendant was a resident of British Columbia at all material times during the proceedings.¹⁹

¹¹ See *Id* at p.7 § 34-37.

¹² *Id* at p.9 § 43.

¹³ *Id* at p.9 § 46.

¹⁴ *Id* at p.9 § 49.

¹⁵ Pltff’s Opp & CM Ex 2, Notice of Hearing, BCSC_000054-000067.

¹⁶ Pltff’s Opp & CM Ex 3, Transcript of March 20, 2012 Hearing, at 2:8-12.

¹⁷ See Pltff’s Opp & CM Ex 4, Transcript of April 11, 2012 Hearing, at 1:25-27; Ex 5, Transcript of September 16, 2013 Proceedings, at 0:5-8; Ex 6, Transcript of September 17, 2013 Proceedings, at 1:15-20; Ex 7, Transcript of September 18, 2013 Proceedings; Ex 8, Transcript of September 19, 2013 Proceedings; Ex 9, Transcript of September 20, 2013 Proceedings; Ex 10, Transcript of September 21, 2013 Proceedings; Ex 11, Transcript of September 23, 2013 Proceedings; Ex 12, Transcript of September 24, 2013 Proceedings.

¹⁸ *Id*.

¹⁹ See Pltff’s Opp & CM Declaration of Plaintiff § 9.

1 Ultimately Defendant was found liable for fraud, and the findings on liability were set forth
 2 by the BCSC on July 8, 2014.²⁰ Another Notice of Hearing was served on Defendant on October 16,
 3 2014, giving a date and time for hearing on sanctions.²¹ A hearing on sanctions was held on February
 4 13, 2015, which was again attended by Defendant's counsel.²² The BCSC's decision on sanctions
 5 was set forth on March 16, 2015, wherein disgorgement was ordered against Defendant.²³
 6

7 Defendant was granted leave to appeal the decisions of the BCSC to the Court of Appeal for
 8 British Columbia, with the Court of Appeal, after hearing submission of counsel for Defendant,
 9 unanimously dismissing the appeal by order pronounced May 31, 2017, as a result of which the
 10 Judgment, including the disgorgement order, remains in full force and effect.²⁴
 11

12 As set forth in the Decision, given that the Defendant is "permanently prohibited" from
 13 engaging in investment activities in British Columbia, and such other Canadian jurisdictions in
 14 which a reciprocal may have been made, he instead has based his operations in Nevada.²⁵ Defendant
 15 has been involved in operations of at least 19 entities in Nevada, the latest being "LVIC
 16 BLOCKCHAIN AND CRYPTOCURRENCY FUND LLC".²⁶
 17

18 **B. Canadian Disgorgement Law**

19 In regard to enforcement of securities law, whereas the U.S. has the federal Securities
 20 Exchange Commission (the "SEC"), Canada has thirteen such organizations, one for each province
 21 and territory of Canada. The BCSC is the senior provincial securities regulator for the province of
 22 British Columbia.
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24 ²⁰ Pltff's Opp & CM Ex 13, Panel Findings on Liability, BCSC_1512-1577.

25 ²¹ Pltff's Opp & CM Ex 14, Notice of Hearing dated October 16, 2014, BCSC_001692.

26 ²² Pltff's Opp & CM Ex 15, Transcript of February 13, 2015 Hearing.

²³ Pltff's Opp & CM Ex 1, Judgment.

27 ²⁴ Pltff's Opp & CM Ex 16, Appellate Court Decision, BCSC_001996-002047, at BCSC_002047 § 167.

28 ²⁵ See Pltff's Opp & CM Ex 1, Judgment § 62(b).

²⁶ Pltff's Opp & CM Ex 17, Lathigee Corporate Vehicles.

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The statute under which the Judgment was granted provides, in s. 161(1)(g), for the judgment debtor to “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.”²⁷ If the Commission recovers money pursuant to a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud can submit an application to have such funds distributed to them.²⁸ Pursuant to section 15.1 of the BC *Securities Act*, and Securities Regulation 196-97 enacted under that statute, it is *mandatory* that the Commission distribute disgorgement funds to proper claimants, and it is therefore the Commission’s strict mandate to do so.²⁹ This is illustrated by the fact that the Commission advertises on its website, under a section entitled “Returning Funds to Investors,” the cases which have received funds pursuant to a judgment under section 161(1)(g), and provides guidance to victims on how they can lay claim to such funds.³⁰ In other words, disgorgement orders made under 161(1)(g) of the BC *Securities Act* are not fines or penalties, but are orders for the funds to be disgorged from the judgment-debtor for any amounts obtained, directly or indirectly, as a result of the judgment-debtor’s misconduct, to then by the Commission to repay the individuals harmed by the judgment-debtor’s misconduct.

Further, any remaining funds, after payment of the claims of investors, are to be used by the BCSC for investor education, and not taken in as general revenue or used for operating expenses.

The Commission must follow the claims process set forth by law to distribute the disgorgement funds to proper claimants.³¹ As such, these funds are compensatory in nature.

²⁷ Pltff’s Opp & CM Ex 19, Canada Securities Act [RSBC 1996] Chapter 413, Part 18, § 161(1)(g).

²⁸ *Id* at Part 3, § 15.1.

²⁹ *Id* at Part 3, § 15.1; See Pltff’s Opp & CM Declaration of Plaintiff § 6; Pltff’s Opp & CM Ex 20, Securities Regulation, B.C. Reg. 196/97, Ministerial Regulation M244/97, Part 3, § 7.4(6).

³⁰ Pltff’s Opp & CM Ex 21, BCSC Website, “Returning Funds to Investors,” accessed August 30, 2018.

³¹ Pltff’s Opp & CM Ex 19, Canada Securities Act [RSBC 1996] Chapter 413, Part

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Penalties and fines were dealt with separately by the orders made by the Commission's panel. Defendant has an additional judgment against him in the amount of \$15 Million CAD for administrative penalties.³² These fines and penalties are set forth separately from the portion of the Judgment for disgorgement, for which the Commission seeks recognition before this Court. Plaintiff's expert has stated unequivocally that disgorgement is a remedy, and not a penalty.³³ Canadian case law, and particularly case law in British Columbia, holds that disgorgement is not a penalty.³⁴ In *United States (Securities Exchange Commission) v. Peever*, the British Columbia Court recognized a US SEC disgorgement order, finding that evidence of the SEC's policy to distribute proceeds of the judgment to injured investors, even when not strictly required to do so, was enough to recognize the judgment and not deem it a penalty for purposes of recognition.³⁵

CONCLUSIONS OF LAW

A. Motion for Summary Judgment Standard.

The primary purpose of a summary judgment procedure is to secure a "just, speedy, and inexpensive determination of any action."³⁶ Although summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist, it enables the trial court to "avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried."³⁷ "Summary judgment is appropriate if, when viewed in the light most

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18, § 161(1)(g).

³² Pltff's Opp & CM Ex 1, Judgment, §§ 18(b), 62(b)(iv-v (erroneously labeled iv)).

³³ Pltff's Opp & CM Ex 30, Plaintiff's Expert's Report p. 3-4.

³⁴ Pltff's Opp & CM Ex 22, *US (SEC) v. Peever*, 2013 BCSC 1090, §§ 27-29.

³⁵ *Id.*

³⁶ *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964); accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 123 P.3d 748, 750 (Nev. 2005).

³⁷ *Id.*

1 favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and
2 the moving party is entitled to judgment as a matter of law.”³⁸

3 Parties resisting summary judgment cannot stand on their pleadings once the movant has
4 submitted affidavits or other similar materials.³⁹ Though inferences are to be drawn in favor of the
5 non-moving party, an opponent to summary judgment must show that he can produce evidence at
6 trial to support his claim.⁴⁰ The Nevada Supreme Court has rejected the “slightest doubt” standard,
7 under which any dispute as to the relevant facts defeats summary judgment.⁴¹ A party resisting
8 summary judgment “is not entitled to build a case on the gossamer threads of whimsy, speculation,
9 and conjecture.”⁴² Rather, the non-moving party must demonstrate specific facts as opposed to
10 general allegations and conclusions.⁴³ Indeed, an opposing party “is not entitled to have [a] motion
11 for summary judgment denied on the mere hope that at trial he will be able to discredit movant’s
12 evidence: he must at the hearing be able to point out to the court something indicating the existence
13 of a triable issue of fact.”⁴⁴

14 **B. British Columbia Disgorgement Judgments Must be Recognized Pursuant to**
15 **NRS 17.700 – 17.820**

16 The Judgment in issue was pronounced by the BCSC, and recognized as a judgment of the
17 British Columbia Supreme Court and, subsequently upheld on appeal. The Judgment is, in all
18 respects, a foreign-country judgment, being a judgment of one of the superior courts of Canada.
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23 ³⁸ NRCP 56(c); *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 710 (Nev. 2014).

24 ³⁹ NRCP 56(e).

25 ⁴⁰ *Van Cleave v. Kietz Mill Minit Mart*, 633 P.2d 1220, 1222 (Nev. 1981).

26 ⁴¹ *Wood v. Safeway*, 121 P.3d at 1031.

27 ⁴² *Collins v. Union Fed. Savings & Loan*, 622 P.2d 610, 621 (Nev. 1983).

28 ⁴³ *LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev. 2002); *Wayment v. Holmes*, 912 P.2d 816, 819 (Nev. 1996).

⁴⁴ *Hickman v. Meadow Wood Reno*, 617 P.2d 871, 872 (Nev. 1980); see also *Aldabe v. Adams*, 402 P.2d 34, 37 (Nev. 1965) (“The word ‘genuine’ has moral overtones; it does not mean a fabricated issue.”); *Elizabeth E. v. ADT Sec. Sys. W.*, 839 P.2d 1308, 1310 (Nev. 1992).

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A Nevada court “*shall* recognize a foreign-country judgment,” to which NRS 17.700 to 17.820 apply, except as provided for under NRS 17.750 sections 2 and 3.⁴⁵ NRS 17.740 sets forth the applicability of NRS 17.700 to 17.820. It states that such statutes apply to the extent that the judgment “(a) Grants or denies recovery of a sum of money; and (b) Under the law of the foreign country where rendered, is final, conclusive and enforceable.”⁴⁶ Further, it provides that such statutes do not apply to the extent that the judgment is “(a) A judgment for taxes; (b) A fine or other penalty; or (c) A judgment for divorce, support or maintenance or other judgment rendered in connection with domestic relations.”⁴⁷

Defendant admits in its responses to Plaintiff’s Requests for Admission numbers 1-4, that the Judgment, against Defendant is final, conclusive and enforceable under the laws of Canada, that the time for appeal has expired, that no payments have been made, and that the Judgment is not for taxes or domestic relations.

In addition to Defendant’s admissions, the Commission has clearly proven that the Judgment grants the recovery of a sum of money, and that under the laws of British Columbia specifically, and Canada generally, the Judgment is final, conclusive and enforceable.⁴⁸ The certificate of the British Columbia Supreme Court, exemplifying the Judgment, states that:

“The Decision was entered as a Judgment on April 1, 2015.”⁴⁹

“The Time for appeal has expired and no appeal is pending under s. 167 of the *Securities Act*.”⁵⁰

“With no payments being made, and the full amount remaining due on the Judgment, as noted above”⁵¹

⁴⁵ NRS 17.750(1).

⁴⁶ NRS 17.740(1).

⁴⁷ NRS 17.740(2).

⁴⁸ See Pltff’s Opp & CM Ex 1, Judgment.

⁴⁹ Pltff’s Opp & CM Ex 1, Judgment, § 3.

⁵⁰ *Id* at § 4.

⁵¹ *Id* at § 6.

1 Additionally, the Judgment is not a judgment for taxes or domestic relations as
2 acknowledged by Defendant's First Amended Answer.⁵²

3 **a. Defendant Waived or Withdrawn all of His Affirmative Defenses to**
4 **Recognition of Foreign Country Judgment under NRS 17.700 – 17.820,**
5 **Except for the Argument that the Judgment is a Penalty**

6 The only grounds for denying recognition of a foreign-country judgment to which the
7 Recognition of Foreign-Country Money Judgments act is applicable are found in NRS 17.750(2) and
8 (3):

9 “2. A court of this State may not recognize a foreign-country judgment if:

- 10 (a) The judgment was rendered under a judicial system that does not provide
11 impartial tribunals or procedures compatible with the requirements of due process of
12 law;
13 (b) The foreign court did not have personal jurisdiction over the defendant; or
14 (c) The foreign court did not have jurisdiction over the subject matter.”

15 “3. A court of this State need not recognize a foreign-country judgment if:

- 16 (a) The defendant in the proceeding in the foreign court did not receive notice
17 of the proceeding in sufficient time to enable the defendant to defend;
18 (b) The judgment was obtained by fraud that deprived the losing party of an
19 adequate opportunity to present its case;
20 (c) The judgment or the cause of action on which the judgment is based is
21 repugnant to the public policy of this State or of the United States;
22 (d) The judgment conflicts with another final and conclusive judgment;
23 (e) The proceeding in the foreign court was contrary to an agreement between
24 the parties under which the dispute in question was to be determined otherwise than
25 by proceedings in that foreign court;
26 (f) In the case of jurisdiction based only on personal service, the foreign court
27 was a seriously inconvenient forum for the trial of the action;
28 (g) The judgment was rendered in circumstances that raise substantial doubt
about the integrity of the rendering court with respect to the judgment; or
(h) The specific proceeding in the foreign court leading to the judgment was
not compatible with the requirements of due process of law.”

“4. A party resisting recognition of a foreign-country judgment has the burden
of establishing that a ground for nonrecognition stated in subsection 2 or 3 exists.”

⁵² Pltff's Opp & CM Ex 18, Defendant's First Amended Answer § 17.

Judging from Defendant's affirmative defenses, Defendant previously rested its defense on §§ 2(a), 3(g) and 3(h). Defendant, however, has waived or withdrawn each of these defenses. In response to Plaintiff's Request for Admission No. 11, Defendant states "Defendant hereby withdraws his lack of due process claim other than as may be affected by defendant's defense that the Disgorgement Judgment is a penalty..."⁵³ Defendant further admits that he was represented by counsel in the proceedings against him, that multiple hearings were held in the proceedings against him, and that he received notice of those hearings.⁵⁴ Defendant further expressly withdraws any claim that the proceedings were inherently biased, that the judgment was rendered in circumstances raising doubts about the integrity of the BCSC, that the proceedings were not compatible with US due process, and that the BCSC delayed this action.⁵⁵

Through its discovery responses, Defendant has waived, or withdrawn, its first, third, fourth, and fifth affirmative defenses. Defendant even waived his second affirmative defense through his Motion for Summary Judgment, which states, "Defendant Lathigee asserts but a single defense that is common to both the NUF-CMJRA and to comity, which is that the Disgorgement Order is in the nature of a fine or penalty."⁵⁶ This leaves only one affirmative defense, that the Judgment "is clearly denoted as a 'sanction' and is otherwise a fine and/or penalty that is not subject to recognition or to comity."⁵⁷

b. Plaintiff's Judgment is not a Penalty

The Restatement (Second) of Conflict of Laws states, "A valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying cause of action are concerned." Plaintiff has a valid

⁵³ See Pltff's Opp & CM Ex 28, Def's Rsp to Pltff's RFAs, Response No. 11.

⁵⁴ See Pltff's Opp & CM Ex 28, Def's Rsp to Pltff's RFAs, Responses No. 12-14.

⁵⁵ See Pltff's Opp & CM Ex 29, Def's Rsp to Pltff's ROGs, Responses No. 2-4, & 6.

⁵⁶ Def's MSJ, Memorandum 1:21-23.

1 disgorgement judgment rendered by the courts of British Columbia Canada after a fair trial in a
2 contested proceeding.

3 The US Supreme Court, in *Kokesh v. S.E.C.*, adopted the position of the Restatement (Third)
4 of Restitution and Unjust Enrichment § 51, Comment a, p. 204 (2010), by holding that
5 “disgorgement is a form of ‘[r]estitution measured by the defendant’s wrongful gain.”⁵⁸ The
6 Restatement (Fourth) of Foreign Relations Law of the United States makes clear that “A judgment
7 in favor of a foreign state awarding restitution for the benefit of private persons is not penal...” As
8 this is a case of first impression in Nevada on this subject matter, and is believed to be so also in the
9 United States, this Court adopts the law of Section 489 cmt. 4 of the Restatement (Fourth) of
10 Foreign Relations Law of the United States as the law of Nevada, and holds that disgorgement
11 judgments are restitutionary under US law and *Kokesh*, and are not penal for purposes of
12 recognition of foreign judgments.

13 In particular this Court finds that the British Columbia judgment sought to be recognized by
14 this Court is not penal, but is a form of restitution, as the funds collected under British Columbia
15 disgorgement judgments are mandated by law to become subject to a claims process in which the
16 judgment funds are used to restore the losses of victims affected by the fraud on which the judgment
17 is based. The statute under which the judgment was granted provides for the judgment debtor to
18 “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a
19 result of the failure to comply or the contravention.”⁵⁹ If the commission receives money pursuant
20 to a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud
21 can submit an application to have such funds distributed to them.⁶⁰ Pursuant to section 15.1 of the
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26 ⁵⁷ Pltff’s Opp & CM Ex 18, Def’s Amended Answer, p. 3-4.

27 ⁵⁸ *Kokesh v. S.E.C.*, 137 S.Ct. 1635, 1640 (2017).

28 ⁵⁹ Pltff’s Opp & CM Ex 2, Canada Securities Act [RSBC 1996] Chapter 418, Part 18, § 161(1)(g).

⁶⁰ *Id* at Part 3, § 15.1.

1 BC *Securities Act*, and Securities Regulation 196-97, it is *mandatory* that the BCSC distribute
 2 disgorgement funds to proper claimants, and it is therefore the BCSC's strict policy to do so.⁶¹
 3 Whatever the "purpose" of the law, clearly the effect is to compensate victims – something the law
 4 mandates by its terms.

5
 6 In this particular case, Plaintiff's judgment is dollar for dollar a disgorgement of amounts
 7 actually held by British Columbia's securities regulator to have been fraudulently taken from
 8 individual investors. The effect of the disgorgement judgment then is to take back those funds
 9 actually taken from individual investors, and to grant restitution to victims through the legally-
 10 mandated claims process.

11 *Kokesh*

12
 13 While this Court has considered the *Kokesh* court's defining disgorgement as penal for the
 14 purposes of a US statute of limitations period, this part of *Kokesh* applies only to US disgorgement,
 15 as the *Kokesh* court specifically stated "We hold that **SEC disgorgement** constitutes a penalty."⁶²
 16 While *Kokesh* is persuasive coming from the US Supreme Court, this Court does not believe
 17 *Kokesh* is binding or even on point for this particular matter, because the *Kokesh* court limited its
 18 application to SEC disgorgement, and the case was strictly in regard to a statute of limitations
 19 matter. While in *Kokesh* the statute of limitations matter was a black and white test of whether the
 20 cause of action would be held to a certain time frame requirement, the issue of a judgment being a
 21 penalty for purposes of recognizing foreign country judgments is a very different analysis, wherein
 22 this Court recognizes that "Enforcement of a judgment affording a private remedy is not barred ...
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 27 ⁶¹ *Id* at Part 3, § 15.1; See Pltff's Opp & CM Declaration of Plaintiff § 6; Pltff's
 28 Opp & CM Ex 3, Securities Regulation, B.C. Reg. 196/97, Ministerial Regulation
 M244/97, Part 3, § 7.4(6).

⁶² *Kokesh v. S.E.C.*, 137 S.Ct. 1635, 1642 (2017) (*emphasis added*).

1 because it is joined with, or awarded in the same proceeding as, a judgment the enforcement of
2 which would be barred..." such as a penalty.⁶³

3 In other words, the *Kokesh* court effectively held that because the judgment in that case was
4 partially penal, it was held to a particular statute of limitations, but in the analysis of recognizing
5 foreign judgments, a partially penal purpose is not dispositive, as the penal portion of a judgment
6 can be separated from the restitution portion of the judgment, and the restitution portion given full
7 recognition. This Court holds that the entire \$21.7 Million judgment sought to be recognized in this
8 case is restitution under US and Nevada law, and should be recognized in its entirety.

9 *Huntington*

10 This Court has also considered the decision in *Huntington v. Attrill*.⁶⁴ *Huntington* did not
11 involve a disgorgement judgment, or even a foreign country judgment, but it instead determined that
12 the Full Faith and Credit Clause does not apply to penal judgments.⁶⁵ So it did not say that courts
13 could not recognize penal judgments, but instead decided only the constitutional question of whether
14 courts were *required* to recognize them under the Full Faith and Credit Clause.⁶⁶ While *Huntington*
15 does not apply to foreign country judgments, the court developed a test for whether a sister-state
16 judgment is penal, determining that the penal status of such a judgment "depends upon the question
17 whether its purpose is to punish an offense against the public justice of the state, or to afford a
18 private remedy to a person injured by the wrongful act."⁶⁷

19 While *Huntington's* test is not binding on this case, because it does not apply to foreign
20 country judgments, the test still leads to a conclusion that a British Columbia disgorgement judgment
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26 ⁶³ Restatement (Fourth) of Foreign Relations Law of the United States § 489
cmt. d.

27 ⁶⁴ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

28 ⁶⁵ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 538
(2011).

⁶⁶ *Id.*

⁶⁷ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

is not a penalty. As discussed at length herein and in Plaintiff's Countermotion, such a judgment's purpose is not to punish an offense against the public justice of the state, but to disgorge the Defendant of his ill-gotten gains, and then those gains are mandatorily returned to the claimants who are Defendant's victims.⁶⁸

The British Columbia disgorgement judgment does not perfectly fall into the *Huntington* test, but it is much more similar, for the purpose of this analysis, to a private remedy than a punishment. The funds from disgorgement orders are strictly required to compensate victims and not go into the general operating revenue.⁶⁹ This is different from administrative penalties which don't compensate victims.⁷⁰

The more appropriate test to follow in this case is that which is set forth by the Restatement (Fourth) of Foreign Relations of the United States, which states that when the judgment (1) is in favor of a foreign state, and (2) results in restitution for the benefit of private persons, then it is not a penalty.⁷¹

Oakland

This Court has also considered the decision in *City of Oakland v. Desert Outdoor Advertising, Inc.*⁷² The *Oakland* case focused on a judgment with a strictly public purpose where no private injury was had, and no right to compensation for individuals existed. Indeed, the judgment in the *Oakland* case came from a municipal code violation for the erection of a billboard determined to be a public nuisance.⁷³ Plaintiff's judgment is not for some public nuisance, but for the disgorgement of stolen funds and profits, and a return of such funds to Defendant's victims.

⁶⁸ See Pltf's Reply Declaration of Plaintiff § 4.

⁶⁹ See Pltf's Reply Declaration of Plaintiff § 5.

⁷⁰ *Id.*

⁷¹ Restatement (Fourth) of Foreign Relations Law of the United States § 489 n. 4; see also § 489(b).

⁷² *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534 (2011).

1 Plaintiff's judgment is not the result of some municipal code prescribing penalties and fines, like a
2 traffic ticket or zoning violation, but is a judgment based on important securities regulations which
3 provide disgorgement which results in those funds being available to victims of the fraud.⁷⁴

4
5 **C. British Columbia Disgorgement Judgments May be Recognized Pursuant to**
6 **Principles of Comity**

7 NRS 17.820 states that "NRS 17.700 to 17.820, inclusive, do not prevent the recognition
8 under principles of comity or otherwise of a foreign-country judgment not within the scope of NRS
9 17.700 to 17.820, inclusive." Under that authority, this Court finds good cause for recognizing
10 Plaintiff's judgment under both NRS 17.700 – 17.820, and comity.

11 A Court may grant comity in recognizing a foreign country judgment even if the judgment is
12 a tax, fine or penalty, as nonrecognition in such cases is permitted but not required.⁷⁵

13 "[C]omity is a principle whereby the courts of one jurisdiction may give effect to the
14 laws and judicial decisions of another jurisdiction out of deference and respect."⁷⁶

15 "A court applying the principle of comity should consider the 'duties, obligations,
16 rights and convenience of its own citizens and of persons who are within the
17 protection of its jurisdiction.'⁷⁷

18 Comity is a rule of practice, convenience, and expediency, rather than rule of law, that courts
19 have embraced to promote cooperation and reciprocity with foreign lands.⁷⁸ Principles of Comity are
20 embraced by both Canada and the United States, in each of their respective Provinces and States, as
21 the two close countries endeavor to promote cooperation and offer reciprocity between two similar
22 legal systems.

23
24 ⁷³ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534 (2011).

25 ⁷⁴ See Pltff's Reply Declaration of Plaintiff § 4.

26 ⁷⁵ Restatement (Third) of Foreign Relations Law of the United States, § 483
cmt a ("Nonrecognition not required but permitted").

27 ⁷⁶ *In re Chao Te*, 2015 WL 3489560, p.2 (Nev.) (citing *Miannecki v. Second*
Judicial Dist. Court, 99 Nev, 93, 98, 658 P.2d 422, 424-25 (1983)).

28 ⁷⁷ *Id.*

⁷⁸ *Mujica v. AirScan, Inc.*, 771 F.3d 580, 598 (9th Cir. 2014) (citing *Pravin*
Banker Assocs., Ltd. v. Banco Popular Del Peru, 109 F.3d 850, 854 (2d

1 While Courts should consider whether due process was given in their decision to grant
2 comity, such requires only that the basic requisites for due process are necessary – including notice
3 and a hearing.⁷⁹ The seminal comity case, *Hilton v. Guyot*, declares:

4 “[Comity] contributes so largely to promote justice between individuals, and to
5 produce a friendly intercourse between the sovereignties to which they belong, that
6 courts of justice have continually acted upon it as a part of the voluntary law of
7 nations.”⁸⁰

8 “Where there has been opportunity for a full and fair trial before a foreign court of
9 competent jurisdiction, conduction the trial on regular proceedings, after due citation
10 of voluntary appearance of the defendant, and under a system of jurisprudence likely
11 to secure an impartial administration of justice between the citizens of that country
12 and those of other countries, and there is nothing to show either prejudice in the
13 court, or in the system of laws under which it was sitting, or fraud in procuring the
14 judgment, or any other special reason why the comity of the United States should not
15 allow it full effect, the merits of the case should not, in an action brought in this
16 country on the judgment, be tried afresh, as on a new trial or an appeal, upon the
17 mere assertion of a party that the judgment was erroneous in law or in fact.”⁸¹

18 Canada and the U.S. have a long history together as two nations which sprung up in close
19 proximity at similar times. The two nations’ legal systems are largely similar, as they both arose from
20 British and European jurisprudence.

21 The SEC and securities commissions of each of the Provinces, including the BCSC, often
22 work together, as the nature of the proximity and relations of the two countries makes it easy for
23 fraud to move between the countries.⁸² The U.S. and many provinces of Canada are actually parties
24 to a Memorandum of Understanding, to which the SEC and BCSC are signatories, which provides
25 that the “Authorities will provide the fullest mutual assistance,” “to facilitate the performance of
26 securities market oversight functions and the conduct of investigations, litigation or prosecution...”⁸³

27 Cir.1997”) (quoting *Somportex Ltd. v. Phila. Chewing Gum Corp.*, 453 F.2d 435,
28 440 (3d Cir.1971)).

⁷⁹ *Society of Lloyd’s v. Hudson*, 276 F.Supp.2d 1110, 1112 (D. Nev. 2003).

⁸⁰ *Hilton v. Guyot*, 159 U.S. 113, 165 (1895).

⁸¹ *Id.* at 123.

⁸² See *S.E.C. v. Lines*, 2009 WL 2431976, p.1 (S.D.N.Y.).

⁸³ Pltff’s Opp & CM Ex 24, Memorandum of Understanding between SEC and BCSC.

Canadian courts, including the British Columbia Courts, have upheld SEC disgorgement judgments on multiple occasions.⁸⁴ One of the more recent cases, *United States (Securities Exchange Commission) v. Peever*, recognized, and permitted enforcement of, an SEC disgorgement judgment, even though the defendant alleged that its purpose was partially penal in nature.⁸⁵ The same Court also gave effect to an SEC disgorgement judgment in *United States (Securities and Exchange Commission) v. Cosby*, holding that “as it is only the disgorgement aspect of the foreign judgment that the plaintiff seeks to enforce, the judgment is not a foreign penal claim and it is enforceable or actionable in this jurisdiction.”⁸⁶ That Court held again, in *United States of America v. Shull*, that the disgorgement order sought to be enforced by the SEC in Canada was “neither a penal sanction nor a taxation measure.”⁸⁷

It is critically important that we maintain our good relations and ties with Canada by giving effect to its Province's judgments, as it gives effect to ours, especially those meant to provide some restoration to the victims of securities fraud. “International law is founded upon mutuality and reciprocity.”⁸⁸ If we want Canada's Provinces to continue to recognize our securities judgments, then we need to recognize theirs.

If we fail to uphold Canada's Provinces' securities judgments, and more particularly, disgorgement judgments, then they may very likely refuse to uphold ours, and in that situation the

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⁸⁴ See Pltf's Opp & CM Ex 22, *United States (Securities Exchange Commission) v. Peever*, 2013 BCSC 1090 (CanLII); Ex 25, *United States (Securities and Exchange Commission) v. Shull*, [1999] B.C.J. No. 1823 (S.C.); and Pltf's Opp & CM Ex 26, *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338.

⁸⁵ Pltf's Opp & CM Ex 22, *United States (Securities Exchange Commission) v. Peever*, 2013 BCSC 1090 (CanLII).

⁸⁶ Pltf's Opp & CM Ex 26, *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338.

⁸⁷ Pltf's Opp & CM Ex 25, *United States (Securities and Exchange Commission) v. Shull*, [1999] B.C.J. No. 1823 (S.C.).

⁸⁸ *Hilton v. Guyot*, 159 U.S. 113, 228 (1895).

citizens of both countries are worse off. U.S. and Nevada citizens who are victimized by securities fraud would be less likely to receive any recompense.

ORDER

Based on the foregoing; the Court finding that it has jurisdiction over the subject matter and the parties hereto, and being otherwise fully advised in the premises and good cause appearing; hereby enters this Judgment.

IT IS HEREBY ORDERED, ADJUDGED AND DE CREED that PLAINTIFF'S Countermotion for Summary Judgment is **GRANTED**.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DE CREED that DEFENDANT'S Motion for Summary Judgment is **DENIED**.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DE CREED that Plaintiff's Judgment in the amount of \$21.7 Million CAD, is hereby recognized and entered, and is fully enforceable in the State of Nevada.

IT IS ORDERED AND ADJUDGED that the plaintiff, the BRITISH COLUMBIA SECURITIES COMMISSION, recover of the defendant MICHAEL PATRICK LATHIGEE the sum of \$21,700,000.00 CAD plus interest on that sum at the statutory rate pursuant to NRS 17.130 or, at the option of the judgment debtor, the number of United States dollars which will purchase the Canadian Dollar with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of \$1,173.39 United States dollars.

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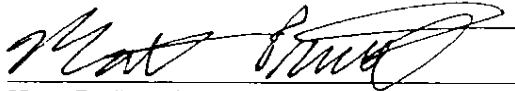
1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that trial deadlines
 2 currently on calendar shall be vacated.

3
 4 DATED this ____ day of _____, 2018.

5
 6 DISTRICT COURT JUDGE

7 Respectfully Submitted by:

8 **ALVERSON TAYLOR & SANDERS**

9
 10 

11 Kurt R. Bonds, Esq. (NBN 6228)

12 Matthew M. Pruitt, Esq. (NBN 12474)

13 6605 Grand Montecito Pkwy.

14 Suite 200

15 Las Vegas, NV 89149

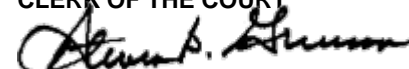
16 *Attorneys for Plaintiff.*

17 *British Columbia Securities Commission*

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Counsel for Defendant,
Michael Patrick Lathigee

STATE OF NEVADA
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY
Hon. Adriana Escobar, District Judge

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE,

Defendant.

Case No. A-18-771407-C {Dept. 14}

**ORDER GRANTING JOINT
APPLICATION FOR RELIEF FROM
TRIAL DEADLINES**

The parties jointly and unanimously, being the British Columbia Securities Commission, plaintiff, and Michael Patrick Lathigee, defendant, by and through their undersigned counsel of record, have applied for an Order relieving them from the deadlines previously set in this Court's Order herein on August 9, 2018, including:

- (1) The requirement to provide a pre-trial memorandum by January 7, 2019;

1 (2) The calendar call to be held on January 17, 2019; and

2 (3) The five-week stack to begin on February 4, 2019.

3 Good cause has been shown in favor of the Application, and it will be and hereby is GRANTED.

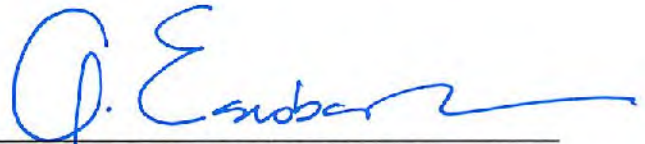
4 The parties are hereby relieved of the above-described deadlines, and such hearings and trial are
5 hereby vacated, pending the Court's resolution of their pending and competing motions for
6 summary judgment herein.

7 //

8 Upon this Court's ruling on the pending and competing motions for summary judgment herein,
9 this Court may then *sua sponte* set or re-set any calendar call, trial and deadlines as applicable, or
10 in the absence thereof any party may request at any time for this Court to set or re-set calendar
11 call, trial and deadlines.

12 //

13 SO ORDERED this 7th day of January, 2019, by:

14 
15 _____
16 Hon. Adriana Escobar
17 Judge of the Eight Judicial District Court
18 *AL*

1 APPL

2 Matthew M. Pruitt, SBN 6228
 3 ALVERSON, TAYLOR *et al.*
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17 Counsel for Defendant,
 18 Michael Patrick Lathigee

19 STATE OF NEVADA
 20 EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY
 21 Hon. Adriana Escobar, District Judge

22 BRITISH COLUMBIA SECURITIES
 23 COMMISSION,

24 Plaintiff,

25 — vs. —

26 MICHAEL PATRICK LATHIGEE,

27 Defendant.

28 Case No. A-18-771407-C {Dept. 14}

**JOINT APPLICATION FOR RELIEF
FROM TRIAL DEADLINES**

DATE/TIME: None

29 The parties jointly and unanimously, being the British Columbia Securities Commission,
 30 plaintiff, and Michael Patrick Lathigee, defendant, by and through their undersigned counsel of
 31 record, do hereby stipulate and apply for an Order relieving them from the deadlines previously
 32 set in this Court's Order herein on August 9, 2018, including:

- 33 (1) The requirement to provide a pre-trial memorandum by January 7, 2019;

(2) The calendar call to be held on January 17, 2019; and

(3) The five-week stack to begin on February 4, 2019.

In support of this application, the parties show that they anticipate that this Court will resolve this matter by way of their competing summary judgment motions one way or the other after the hearing on those motions held on December 4 2018; additionally, preparing for trial will be particularly expensive in this case as it will require both parties to expend considerable sums to prepare their expert witnesses to testify, and to travel from outside the United States (from Vancouver) to Las Vegas.

//

A proposed Order is submitted herewith.

//

Respectfully submitted this 7th day of January, 2019, by:

/s/ Matthew M. Pruitt

Matthew M. Pruitt

Counsel for Plaintiff

British Columbia Securities Commission

/s/ Jay D. Adkisson

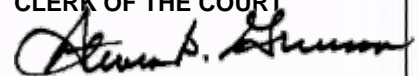
Jay D. Adkisson

Counsel for Defendant

Michael Patrick Lathigee

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DISTRICT COURT

CLARK COUNTY, NEVADA

-*-

BRITISH COLUMBIA SECURITIES
COMMISSION,

CASE NO.: A-18-771407-C
DEPT. NO.: XIV

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT**

This matter came before the Court pursuant to Defendant's Motion for Summary Judgment, and Plaintiff's Countermotion for Summary Judgment. At a hearing on December 4, 2018 Matthew Pruitt, Esq. appeared on behalf of Plaintiff, and Jay Adkisson, Esq. appeared on behalf of Defendant.

The Court having reviewed the pleadings and papers on file, being fully advised in the premises, and having heard the arguments of counsel, for reasons stated on the record and good cause appearing therefor, enters the following findings of fact and conclusions of law in this matter.

FINDINGS OF FACT

On March 30, 2018, Plaintiff, BRITISH COLUMBIA SECURITIES COMMISSION, commenced this action by filing a Complaint for recognition of foreign country judgment under the Recognition of Foreign-Country Money Judgments (Uniform Act), found at NRS 17.700 et. seq., and under Comity, naming MICHAEL PATRICK LATHIGEE as a Defendant. Defendant subsequently

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<input checked="" type="checkbox"/> Summary Judgment	<input type="checkbox"/> Judgment of Arbitration
<input type="checkbox"/> Stipulated Judgment	
<input type="checkbox"/> Default Judgment	
<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Motion to Dismiss by Deft(s)
<input type="checkbox"/> Involuntary Dismissal	
<input type="checkbox"/> Stipulated Dismissal	

1 answered the Complaint on April 9, 2018, and filed an Amended Answer on June 6, 2018. Defendant
 2 filed a Motion for Summary Judgment on October 19, 2018, to which Plaintiff filed its Opposition
 3 and Countermotion on November 9, 2018.

4 A. The Underlying Judgment

5 On March 16, 2015, the British Columbia Securities Commission (the "BCSC") rendered a
 6 decision (the "Decision") against Defendant pursuant to a hearing under British Columbia law and
 7 pursuant to sections 161(1) and 162 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "BC *Securities*
 8 *Act*").¹ On April 1, 2015, and pursuant to section 163 of the BC *Securities Act*,² the BCSC registered
 9 the Decision with the British Columbia Supreme Court, by which the Decision was deemed to be a
 10 judgment of the British Columbia Supreme Court (the "Judgment").³ The Judgment was appealed by
 11 Defendant, but the appeal was denied by the Court of Appeal for British Columbia on May 31,
 12 2017.⁴ The time for appeal has expired and no appeal is pending.⁵

13 The Judgment is for disgorgement of \$21,700,000.00 CAD, and corresponds to the
 14 \$21,700,000.00 CAD which Defendant was found to have fraudulently raised from 698 investors.⁶
 15 Defendant was also assessed with an administrative penalty of \$15 Million CAD, which was also
 16 registered with the Supreme Court of British Columbia, but the Plaintiff is not requesting that this
 17 related judgment be recognized by this Court.⁷

18 ///

19 ///

20 ///

21 ¹ Pltff's Opp & CM Ex 1, p.1.

22 ² *Id.*

23 ³ *Id.*

24 ⁴ Pltff's Opp & CM Ex 16, BCSC_001996 & BCSC_002047.

25 ⁵ Pltff's Opp & CM Ex 1, p.1.

26 ⁶ *Id.* at Decision § 2.

27 ⁷ *Id.* at Decision § 62(b) (iv).

a. **The Details**

In a decision dated July 8, 2014 (the "Liability Findings"), the BCSC found that Defendant, Mr. Lathigee, together with others (often referred to as the FIC Group), perpetrated a fraud, contrary to section 57(b) of the BC Securities Act when:

- (a) he raised \$21.7 million (CAD) from 698 investors without disclosing to those investors important facts about FIC Group's financial condition; and
- (b) he raised \$9.9 million (CAD) from 331 investors for the purpose of investing in foreclosure properties, and instead used most of the funds to make unsecured loans to other members of the FIC Group, the proceeds of which were used at least in part to pay salaries and other overhead expenses of the FIC Group.⁸

On March 16, 2015, the Commission issued the Decision which included disgorgement orders against the following parties in the following amounts:

- a. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC REAL ESTATE PROJECTS LTD., jointly and severally, \$9,800,000
- b. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC FORECLOSURE FUND LTD., jointly and severally, \$9,900,000
- c. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, WBIC CANADA LTD., jointly and severally, \$2,000,000

On April 15, 2015, the Decision was registered in the Vancouver Registry of the British Columbia Supreme Court, pursuant to section 163 of the BC *Securities Act* as a judgment of that Court, under registry file no. L-150117.⁹

The amount of the Judgment ordered to be payable by Michael Patrick Lathigee, jointly and severally with other defendants, excluding administrative penalties, is \$21,700,000 CAD.¹⁰ That

///

⁸ Pltff's Opp & CM Ex 1, Judgment, p.1 § 2.

⁹ Pltff's Opp & CM Ex 1, Judgment.

¹⁰ *Id* at p.9 §§ 43, 46, and 49, and p.13 § 62(d).

amount of the Judgment was granted for disgorgement of funds fraudulently obtained from investors, pursuant to section 161(1)(g) of the BC Securities Act.¹¹ Specifically the tribunal stated:

“We find we have the authority to order disgorgement against the individual respondents in this case, up to \$21.7 million, the full amount obtained by fraud.”¹²

“The amounts obtained from investors need not be traced to them specifically and we find that \$21.7 million was obtained, directly or indirectly, as a result of their individual contraventions of the Act.”¹³

“Each respondent’s misconduct contributed to the raising of the \$21.7 million fraudulently. We find that it is in the public interest to order the respondents to pay the full amount obtained as a result of their fraud.”¹⁴

Prior to the proceedings which led to the Judgment, Defendant was served with a Notice of Hearing, dated March 1, 2012, which set forth the allegations and gave a date, time, and location for a hearing.¹⁵ Defendant’s counsel, H. Roderick Anderson of Harper Grey LLP, accepted service of the notice on March 8, 2012, and then appeared for all respondents at the March 20, 2012 hearing.¹⁶ Defendant continued to be represented by such counsel throughout the proceedings of the case.¹⁷ In fact Defendant was afforded at least six days of trial wherein his counsel was able to call and cross-examine witnesses, and present evidence.¹⁸ There is no question regarding personal jurisdiction over Defendant, as Defendant was a resident of British Columbia at all material times during the proceedings.¹⁹

¹¹ See *Id* at p.7 § 34-37.

¹² *Id* at p.9 § 43.

¹³ *Id* at p.9 § 46.

¹⁴ *Id* at p.9 § 49.

¹⁵ Pltf’s Opp & CM Ex 2, Notice of Hearing, BCSC_000054-000067.

¹⁶ Pltf’s Opp & CM Ex 3, Transcript of March 20, 2012 Hearing, at 2:8-12.

¹⁷ See Pltf’s Opp & CM Ex 4, Transcript of April 11, 2012 Hearing, at 1:25-27; Ex 5, Transcript of September 16, 2013 Proceedings, at 0:5-8; Ex 6, Transcript of September 17, 2013 Proceedings, at 1:15-20; Ex 7, Transcript of September 18, 2013 Proceedings; Ex 8, Transcript of September 19, 2013 Proceedings; Ex 9, Transcript of September 20, 2013 Proceedings; Ex 10, Transcript of September 21, 2013 Proceedings; Ex 11, Transcript of September 23, 2013 Proceedings; Ex 12, Transcript of September 24, 2013 Proceedings.

¹⁸ *Id*.

¹⁹ See Pltf’s Opp & CM Declaration of Plaintiff § 9.

1 Ultimately Defendant was found liable for fraud, and the findings on liability were set forth
 2 by the BCSC on July 8, 2014.²⁰ Another Notice of Hearing was served on Defendant on October 16,
 3 2014, giving a date and time for hearing on sanctions.²¹ A hearing on sanctions was held on February
 4 13, 2015, which was again attended by Defendant's counsel.²² The BCSC's decision on sanctions
 5 was set forth on March 16, 2015, wherein disgorgement was ordered against Defendant.²³
 6

7 Defendant was granted leave to appeal the decisions of the BCSC to the Court of Appeal for
 8 British Columbia, with the Court of Appeal, after hearing submission of counsel for Defendant,
 9 unanimously dismissing the appeal by order pronounced May 31, 2017, as a result of which the
 10 Judgment, including the disgorgement order, remains in full force and effect.²⁴
 11

12 As set forth in the Decision, given that the Defendant is "permanently prohibited" from
 13 engaging in investment activities in British Columbia, and such other Canadian jurisdictions in
 14 which a reciprocal may have been made, he instead has based his operations in Nevada.²⁵ Defendant
 15 has been involved in operations of at least 19 entities in Nevada, the latest being "LVIC
 16 BLOCKCHAIN AND CRYPTOCURRENCY FUND LLC".²⁶
 17

18 **B. Canadian Disgorgement Law**

19 In regard to enforcement of securities law, whereas the U.S. has the federal Securities
 20 Exchange Commission (the "SEC"), Canada has thirteen such organizations, one for each province
 21 and territory of Canada. The BCSC is the senior provincial securities regulator for the province of
 22 British Columbia.
 23

24 ²⁰ Pltff's Opp & CM Ex 13, Panel Findings on Liability, BCSC_1512-1577.

25 ²¹ Pltff's Opp & CM Ex 14, Notice of Hearing dated October 16, 2014, BCSC_001692.

26 ²² Pltff's Opp & CM Ex 15, Transcript of February 13, 2015 Hearing.

27 ²³ Pltff's Opp & CM Ex 1, Judgment.

28 ²⁴ Pltff's Opp & CM Ex 16, Appellate Court Decision, BCSC_001996-002047, at BCSC_002047 § 167.

²⁵ See Pltff's Opp & CM Ex 1, Judgment § 62(b).

²⁶ Pltff's Opp & CM Ex 17, Lathigee Corporate Vehicles.

The statute under which the Judgment was granted provides, in s. 161(1)(g), for the judgment debtor to “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.”²⁷ If the Commission recovers money pursuant to a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud can submit an application to have such funds distributed to them.²⁸ Pursuant to section 15.1 of the *BC Securities Act*, and Securities Regulation 196-97 enacted under that statute, it is *mandatory* that the Commission distribute disgorgement funds to proper claimants, and it is therefore the Commission’s strict mandate to do so.²⁹ This is illustrated by the fact that the Commission advertises on its website, under a section entitled “Returning Funds to Investors,” the cases which have received funds pursuant to a judgment under section 161(1)(g), and provides guidance to victims on how they can lay claim to such funds.³⁰ In other words, disgorgement orders made under 161(1)(g) of the *BC Securities Act* are not fines or penalties, but are orders for the funds to be disgorged from the judgment-debtor for any amounts obtained, directly or indirectly, as a result of the judgment-debtor’s misconduct, to then by the Commission to repay the individuals harmed by the judgment-debtor’s misconduct.

Further, any remaining funds, after payment of the claims of investors, are to be used by the BCSC for investor education, and not taken in as general revenue or used for operating expenses.

The Commission must follow the claims process set forth by law to distribute the disgorgement funds to proper claimants.³¹ As such, these funds are compensatory in nature.

²⁷ Pltf’s Opp & CM Ex 19, Canada Securities Act [RSBC 1996] Chapter 418, Part 18, § 161(1)(g).

²⁸ *Id* at Part 3, § 15.1.

²⁹ *Id* at Part 3, § 15.1; See Pltf’s Opp & CM Declaration of Plaintiff § 6; Pltf’s Opp & CM Ex 20, Securities Regulation, B.C. Reg. 196/97, Ministerial Regulation M244/97, Part 3, § 7.4(6).

³⁰ Pltf’s Opp & CM Ex 21, BCSC Website, “Returning Funds to Investors,” accessed August 30, 2018.

³¹ Pltf’s Opp & CM Ex 19, Canada Securities Act [RSBC 1996] Chapter 418, Part

Penalties and fines were dealt with separately by the orders made by the Commission's panel. Defendant has an additional judgment against him in the amount of \$15 Million CAD for administrative penalties.³² These fines and penalties are set forth separately from the portion of the Judgment for disgorgement, for which the Commission seeks recognition before this Court. Plaintiff's expert has stated unequivocally that disgorgement is a remedy, and not a penalty.³³ Canadian case law, and particularly case law in British Columbia, holds that disgorgement is not a penalty.³⁴ In *United States (Securities Exchange Commission) v. Peever*, the British Columbia Court recognized a US SEC disgorgement order, finding that evidence of the SEC's policy to distribute proceeds of the judgment to injured investors, even when not strictly required to do so, was enough to recognize the judgment and not deem it a penalty for purposes of recognition.³⁵

CONCLUSIONS OF LAW

A. Motion for Summary Judgment Standard.

The primary purpose of a summary judgment procedure is to secure a "just, speedy, and inexpensive determination of any action."³⁶ Although summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist, it enables the trial court to "avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried."³⁷ "Summary judgment is appropriate if, when viewed in the light most

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¹⁸, § 161(1)(g).

³² Pltf's Opp & CM Ex 1, Judgment, §§ 18(b), 62(b) (iv-v (erroneously labeled iv)).

³³ Pltf's Opp & CM Ex 30, Plaintiff's Expert's Report p. 3-4.

³⁴ Pltf's Opp & CM Ex 22, *US (SEC) v. Peever*, 2013 BCSC 1090, §§ 27-29.

³⁵ *Id.*

³⁶ *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964); accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 123 P.3d 748, 750 (Nev. 2005).

³⁷ *Id.*

1 favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and
2 the moving party is entitled to judgment as a matter of law."³⁸

3 Parties resisting summary judgment cannot stand on their pleadings once the movant has
4 submitted affidavits or other similar materials.³⁹ Though inferences are to be drawn in favor of the
5 non-moving party, an opponent to summary judgment must show that he can produce evidence at
6 trial to support his claim.⁴⁰ The Nevada Supreme Court has rejected the "slightest doubt" standard,
7 under which any dispute as to the relevant facts defeats summary judgment.⁴¹ A party resisting
8 summary judgment "is not entitled to build a case on the gossamer threads of whimsy, speculation,
9 and conjecture."⁴² Rather, the non-moving party must demonstrate specific facts as opposed to
10 general allegations and conclusions.⁴³ Indeed, an opposing party "is not entitled to have [a] motion
11 for summary judgment denied on the mere hope that at trial he will be able to discredit movant's
12 evidence; he must at the hearing be able to point out to the court something indicating the existence
13 of a triable issue of fact."⁴⁴

14 **B. British Columbia Disgorgement Judgments Must be Recognized Pursuant to**
15 **NRS 17.700 – 17.820**

16 The Judgment in issue was pronounced by the BCSC, and recognized as a judgment of the
17 British Columbia Supreme Court and, subsequently upheld on appeal. The Judgment is, in all
18 respects, a foreign-country judgment, being a judgment of one of the superior courts of Canada.
19
20
21
22

23 ³⁸ NRCP 56(c); *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 710
(Nev. 2014).

24 ³⁹ NRCP 56(e).

25 ⁴⁰ *Van Cleave v. Kietz-Mill Minit Mart*, 633 P.2d 1220, 1222 (Nev. 1981).

26 ⁴¹ *Wood v. Safeway*, 121 P.3d at 1031.

27 ⁴² *Collins v. Union Fed. Savings & Loan*, 622 P.2d 610, 621 (Nev. 1983).

28 ⁴³ *LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev. 2002); *Wayment v. Holmes*, 912
P.2d 816, 819 (Nev. 1996).

⁴⁴ *Hickman v. Meadow Wood Reno*, 617 P.2d 871, 872 (Nev. 1980); see also *Aldabe*
v. Adams, 402 P.2d 34, 37 (Nev. 1965) ("The word 'genuine' has moral
overtones; it does not mean a fabricated issue."); *Elizabeth E. v. ADT Sec.*
Sys. W., 839 P.2d 1308, 1310 (Nev. 1992).

1 A Nevada court “shall recognize a foreign-country judgment,” to which NRS 17.700 to
 2 17.820 apply, except as provided for under NRS 17.750 sections 2 and 3.⁴⁵ NRS 17.740 sets forth the
 3 applicability of NRS 17.700 to 17.820. It states that such statutes apply to the extent that the
 4 judgment “(a) Grants or denies recovery of a sum of money; and (b) Under the law of the foreign
 5 country where rendered, is final, conclusive and enforceable.”⁴⁶ Further, it provides that such statutes
 6 do not apply to the extent that the judgment is “(a) A judgment for taxes; (b) A fine or other penalty;
 7 or (c) A judgment for divorce, support or maintenance or other judgment rendered in connection with
 8 domestic relations.”⁴⁷

10 Defendant admits in its responses to Plaintiff’s Requests for Admission numbers 1-4, that the
 11 Judgment, against Defendant is final, conclusive and enforceable under the laws of Canada, that the
 12 time for appeal has expired, that no payments have been made, and that the Judgment is not for taxes
 13 or domestic relations.

15 In addition to Defendant’s admissions, the Commission has clearly proven that the Judgment
 16 grants the recovery of a sum of money, and that under the laws of British Columbia specifically, and
 17 Canada generally, the Judgment is final, conclusive and enforceable.⁴⁸ The certificate of the British
 18 Columbia Supreme Court, exemplifying the Judgment, states that:

20 “The Decision was entered as a Judgment on April 1, 2015.”⁴⁹

21 “The Time for appeal has expired and no appeal is pending under s. 167 of the
 22 *Securities Act*.”⁵⁰

23 “With no payments being made, and the full amount remaining due on the Judgment,
 24 as noted above”⁵¹

25 ⁴⁵ NRS 17.750(1) .

26 ⁴⁶ NRS 17.740(1) .

27 ⁴⁷ NRS 17.740(2) .

⁴⁸ See Pltf’s Opp & CM Ex 1, Judgment.

⁴⁹ Pltf’s Opp & CM Ex 1, Judgment, § 3.

28 ⁵⁰ *Id* at § 4.

⁵¹ *Id* at § 6.

1 Additionally, the Judgment is not a judgment for taxes or domestic relations as
2 acknowledged by Defendant's First Amended Answer.⁵²

3 **a. Defendant Waived or Withdrawn all of His Affirmative Defenses to**
4 **Recognition of Foreign Country Judgment under NRS 17.700 – 17.820,**
5 **Except for the Argument that the Judgment is a Penalty**

6 The only grounds for denying recognition of a foreign-country judgment to which the
7 Recognition of Foreign-Country Money Judgments act is applicable are found in NRS 17.750(2) and
8 (3):

9 “2. A court of this State may not recognize a foreign-country judgment if:

- 10 (a) The judgment was rendered under a judicial system that does not provide
11 impartial tribunals or procedures compatible with the requirements of due process of
12 law;
13 (b) The foreign court did not have personal jurisdiction over the defendant; or
14 (c) The foreign court did not have jurisdiction over the subject matter.”

15 “3. A court of this State need not recognize a foreign-country judgment if:

- 16 (a) The defendant in the proceeding in the foreign court did not receive notice
17 of the proceeding in sufficient time to enable the defendant to defend;
18 (b) The judgment was obtained by fraud that deprived the losing party of an
19 adequate opportunity to present its case;
20 (c) The judgment or the cause of action on which the judgment is based is
21 repugnant to the public policy of this State or of the United States;
22 (d) The judgment conflicts with another final and conclusive judgment;
23 (e) The proceeding in the foreign court was contrary to an agreement between
24 the parties under which the dispute in question was to be determined otherwise than
25 by proceedings in that foreign court;
26 (f) In the case of jurisdiction based only on personal service, the foreign court
27 was a seriously inconvenient forum for the trial of the action;
28 (g) The judgment was rendered in circumstances that raise substantial doubt
about the integrity of the rendering court with respect to the judgment; or
(h) The specific proceeding in the foreign court leading to the judgment was
not compatible with the requirements of due process of law.”

“4. A party resisting recognition of a foreign-country judgment has the burden
of establishing that a ground for nonrecognition stated in subsection 2 or 3 exists.”

⁵² Pltff's Opp & CM Ex 18, Defendant's First Amended Answer § 17.

Judging from Defendant's affirmative defenses, Defendant previously rested its defense on §§ 2(a), 3(g) and 3(h). Defendant, however, has waived or withdrawn each of these defenses. In response to Plaintiff's Request for Admission No. 11, Defendant states "Defendant hereby withdraws his lack of due process claim other than as may be affected by defendant's defense that the Disgorgement Judgment is a penalty..."⁵³ Defendant further admits that he was represented by counsel in the proceedings against him, that multiple hearings were held in the proceedings against him, and that he received notice of those hearings.⁵⁴ Defendant further expressly withdraws any claim that the proceedings were inherently biased, that the judgment was rendered in circumstances raising doubts about the integrity of the BCSC, that the proceedings were not compatible with US due process, and that the BCSC delayed this action.⁵⁵

Through its discovery responses, Defendant has waived, or withdrawn, its first, third, fourth, and fifth affirmative defenses. Defendant even waived his second affirmative defense through his Motion for Summary Judgment, which states, "Defendant Lathigee asserts but a single defense that is common to both the NUF-CMJRA and to comity, which is that the Disgorgement Order is in the nature of a fine or penalty."⁵⁶ This leaves only one affirmative defense, that the Judgment "is clearly denoted as a 'sanction' and is otherwise a fine and/or penalty that is not subject to recognition or to comity."⁵⁷

b. Plaintiff's Judgment is not a Penalty

The Restatement (Second) of Conflict of Laws states, "A valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying cause of action are concerned." Plaintiff has a valid

⁵³ See Pltff's Opp & CM Ex 28, Def's Rsps to Pltff's RFAs, Response No. 11.

⁵⁴ See Pltff's Opp & CM Ex 28, Def's Rsps to Pltff's RFAs, Responses No. 12-14.

⁵⁵ See Pltff's Opp & CM Ex 29, Def's Rsps to Pltff's ROGs, Responses No. 2-4, & 6.

⁵⁶ Def's MSJ, Memorandum 1:21-23.

1 disgorgement judgment rendered by the courts of British Columbia Canada after a fair trial in a
2 contested proceeding.

3 The US Supreme Court, in *Kokesh v. S.E.C.*, adopted the position of the Restatement (Third)
4 of Restitution and Unjust Enrichment § 51, Comment a, p. 204 (2010), by holding that
5 “disgorgement is a form of ‘[r]estitution measured by the defendant’s wrongful gain.’”⁵⁸ The
6 Restatement (Fourth) of Foreign Relations Law of the United States makes clear that “A judgment
7 in favor of a foreign state awarding restitution for the benefit of private persons is not penal...” As
8 this is a case of first impression in Nevada on this subject matter, and is believed to be so also in the
9 United States, this Court adopts the law of Section 489 cmt. 4 of the Restatement (Fourth) of
10 Foreign Relations Law of the United States as the law of Nevada, and holds that disgorgement
11 judgments are restitutionary under US law and *Kokesh*, and are not penal for purposes of
12 recognition of foreign judgments.

13 In particular this Court finds that the British Columbia judgment sought to be recognized by
14 this Court is not penal, but is a form of restitution, as the funds collected under British Columbia
15 disgorgement judgments are mandated by law to become subject to a claims process in which the
16 judgment funds are used to restore the losses of victims affected by the fraud on which the judgment
17 is based. The statute under which the judgment was granted provides for the judgment debtor to
18 “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a
19 result of the failure to comply or the contravention.”⁵⁹ If the commission receives money pursuant to
20 a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud
21 can submit an application to have such funds distributed to them.⁶⁰ Pursuant to section 15.1 of the
22
23
24
25

26 ⁵⁷ Pltff’s Opp & CM Ex 18, Def’s Amended Answer, p. 3-4.

27 ⁵⁸ *Kokesh v. S.E.C.*, 137 S.Ct. 1635, 1640 (2017).

28 ⁵⁹ Pltff’s Opp & CM Ex 2, Canada Securities Act [RSBC 1996] Chapter 418, Part 18, § 161(1)(g).

⁶⁰ *Id* at Part 3, § 15.1.

1 BC *Securities Act*, and Securities Regulation 196-97, it is *mandatory* that the BCSC distribute
 2 disgorgement funds to proper claimants, and it is therefore the BCSC's strict policy to do so.⁶¹
 3 Whatever the "purpose" of the law, clearly the effect is to compensate victims – something the law
 4 mandates by its terms.
 5

6 In this particular case, Plaintiff's judgment is dollar for dollar a disgorgement of amounts
 7 actually held by British Columbia's securities regulator to have been fraudulently taken from
 8 individual investors. The effect of the disgorgement judgment then is to take back those funds
 9 actually taken from individual investors, and to grant restitution to victims through the legally-
 10 mandated claims process.
 11

12 *Kokesh*

13 While this Court has considered the *Kokesh* court's defining disgorgement as penal for the
 14 purposes of a US statute of limitations period, this part of *Kokesh* applies only to US disgorgement,
 15 as the *Kokesh* court specifically stated "We hold that **SEC disgorgement** constitutes a penalty."⁶²
 16

17 While *Kokesh* is persuasive coming from the US Supreme Court, this Court does not believe
 18 *Kokesh* is binding or even on point for this particular matter, because the *Kokesh* court limited its
 19 application to SEC disgorgement, and the case was strictly in regard to a statute of limitations
 20 matter. While in *Kokesh* the statute of limitations matter was a black and white test of whether the
 21 cause of action would be held to a certain time frame requirement, the issue of a judgment being a
 22 penalty for purposes of recognizing foreign country judgments is a very different analysis, wherein
 23 this Court recognizes that "Enforcement of a judgment affording a private remedy is not barred ...
 24

25 ///

26
 27 ⁶¹ *Id* at Part 3, § 15.1; See Pltf's Opp & CM Declaration of Plaintiff § 6; Pltf's
 28 Opp & CM Ex 3, Securities Regulation, B.C. Reg. 196/97, Ministerial Regulation
 M244/97, Part 3, § 7.4(6).

⁶² *Kokesh v. S.E.C.*, 137 S.Ct. 1635, 1642 (2017) (*emphasis added*).

1 because it is joined with, or awarded in the same proceeding as, a judgment the enforcement of
2 which would be barred...” such as a penalty.⁶³

3 In other words, the *Kokesh* court effectively held that because the judgment in that case was
4 partially penal, it was held to a particular statute of limitations, but in the analysis of recognizing
5 foreign judgments, a partially penal purpose is not dispositive, as the penal portion of a judgment
6 can be separated from the restitution portion of the judgment, and the restitution portion given full
7 recognition. This Court holds that the entire \$21.7 Million judgment sought to be recognized in this
8 case is restitution under US and Nevada law, and should be recognized in its entirety.
9

10 *Huntington*

11 This Court has also considered the decision in *Huntington v. Attrill*.⁶⁴ *Huntington* did not
12 involve a disgorgement judgment, or even a foreign country judgment, but it instead determined that
13 the Full Faith and Credit Clause does not apply to penal judgments.⁶⁵ So it did not say that courts
14 could not recognize penal judgments, but instead decided only the constitutional question of whether
15 courts were *required* to recognize them under the Full Faith and Credit Clause.⁶⁶ While *Huntington*
16 does not apply to foreign country judgments, the court developed a test for whether a sister-state
17 judgment is penal, determining that the penal status of such a judgment “depends upon the question
18 whether its purpose is to punish an offense against the public justice of the state, or to afford a
19 private remedy to a person injured by the wrongful act.”⁶⁷
20

21 While *Huntington's* test is not binding on this case, because it does not apply to foreign
22 country judgments, the test still leads to a conclusion that a British Columbia disgorgement judgment
23
24

25 ⁶³ Restatement (Fourth) of Foreign Relations Law of the United States § 489
26 cmt. d.

27 ⁶⁴ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

28 ⁶⁵ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 538
(2011).

⁶⁶ *Id.*

⁶⁷ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

1 is not a penalty. As discussed at length herein and in Plaintiff's Countermotion, such a judgment's
2 purpose is not to punish an offense against the public justice of the state, but to disgorge the
3 Defendant of his ill-gotten gains, and then those gains are mandatorily returned to the claimants who
4 are Defendant's victims.⁶⁸

5
6 The British Columbia disgorgement judgment does not perfectly fall into the *Huntington*
7 test, but it is much more similar, for the purpose of this analysis, to a private remedy than a
8 punishment. The funds from disgorgement orders are strictly required to compensate victims and
9 not go into the general operating revenue.⁶⁹ This is different from administrative penalties which
10 don't compensate victims.⁷⁰

11
12 The more appropriate test to follow in this case is that which is set forth by the Restatement
13 (Fourth) of Foreign Relations of the United States, which states that when the judgment (1) is in
14 favor of a foreign state, and (2) results in restitution for the benefit of private persons, then it is not a
15 penalty.⁷¹

16 ***Oakland***

17 This Court has also considered the decision in *City of Oakland v. Desert Outdoor*
18 *Advertising, Inc.*⁷² The *Oakland* case focused on a judgment with a strictly public purpose where no
19 private injury was had, and no right to compensation for individuals existed. Indeed, the judgment
20 in the *Oakland* case came from a municipal code violation for the erection of a billboard determined
21 to be a public nuisance.⁷³ Plaintiff's judgment is not for some public nuisance, but for the
22 disgorgement of stolen funds and profits, and a return of such funds to Defendant's victims.
23
24

25 ⁶⁸ See Pltf's Reply Declaration of Plaintiff § 4.

26 ⁶⁹ See Pltf's Reply Declaration of Plaintiff § 5.

27 ⁷⁰ *Id.*

28 ⁷¹ Restatement (Fourth) of Foreign Relations Law of the United States § 489 n. 4; see also § 489(b).

⁷² *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534 (2011).

Plaintiff's judgment is not the result of some municipal code prescribing penalties and fines, like a traffic ticket or zoning violation, but is a judgment based on important securities regulations which provide disgorgement which results in those funds being available to victims of the fraud.⁷⁴

C. British Columbia Disgorgement Judgments May be Recognized Pursuant to Principles of Comity

NRS 17.820 states that "NRS 17.700 to 17.820, inclusive, do not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of NRS 17.700 to 17.820, inclusive." Under that authority, this Court finds good cause for recognizing Plaintiff's judgment under both NRS 17.700 – 17.820, and comity.

A Court may grant comity in recognizing a foreign country judgment even if the judgment is a tax, fine or penalty, as nonrecognition in such cases is permitted but not required.⁷⁵

"[C]omity is a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect."⁷⁶

"A court applying the principle of comity should consider the 'duties, obligations, rights and convenience of its own citizens and of persons who are within the protection of its jurisdiction.'"⁷⁷

Comity is a rule of practice, convenience, and expediency, rather than rule of law, that courts have embraced to promote cooperation and reciprocity with foreign lands.⁷⁸ Principles of Comity are embraced by both Canada and the United States, in each of their respective Provinces and States, as the two close countries endeavor to promote cooperation and offer reciprocity between two similar legal systems.

⁷³ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534 (2011).

⁷⁴ See Pltff's Reply Declaration of Plaintiff § 4.

⁷⁵ Restatement (Third) of Foreign Relations Law of the United States, § 483 cmt a ("Nonrecognition not required but permitted").

⁷⁶ *In re Chao-Te*, 2015 WL 3489560, p.2 (Nev.) (citing *Miannecki v. Second Judicial Dist. Court*, 99 Nev, 93, 98, 658 P.2d 422, 424-25 (1983)).

⁷⁷ *Id.*

⁷⁸ *Mujica v. AirScan, Inc.*, 771 F.3d 580, 598 (9th Cir. 2014) (citing *Pravin Banker Assocs., Ltd. v. Banco Popular Del Peru*, 109 F.3d 850, 854 (2d

1 While Courts should consider whether due process was given in their decision to grant
2 comity, such requires only that the basic requisites for due process are necessary – including notice
3 and a hearing.⁷⁹ The seminal comity case, *Hilton v. Guyot*, declares:

4 “[Comity] contributes so largely to promote justice between individuals, and to
5 produce a friendly intercourse between the sovereignties to which they belong, that
6 courts of justice have continually acted upon it as a part of the voluntary law of
7 nations.”⁸⁰

8 “Where there has been opportunity for a full and fair trial before a foreign court of
9 competent jurisdiction, conduction the trial on regular proceedings, after due citation
10 of voluntary appearance of the defendant, and under a system of jurisprudence likely
11 to secure an impartial administration of justice between the citizens of that country
12 and those of other countries, and there is nothing to show either prejudice in the
13 court, or in the system of laws under which it was sitting, or fraud in procuring the
14 judgment, or any other special reason why the comity of the United States should not
15 allow it full effect, the merits of the case should not, in an action brought in this
16 country on the judgment, be tried afresh, as on a new trial or an appeal, upon the
17 mere assertion of a party that the judgment was erroneous in law or in fact.”⁸¹

18 Canada and the U.S. have a long history together as two nations which sprung up in close
19 proximity at similar times. The two nations’ legal systems are largely similar, as they both arose from
20 British and European jurisprudence.

21 The SEC and securities commissions of each of the Provinces, including the BCSC, often
22 work together, as the nature of the proximity and relations of the two countries makes it easy for
23 fraud to move between the countries.⁸² The U.S. and many provinces of Canada are actually parties
24 to a Memorandum of Understanding, to which the SEC and BCSC are signatories, which provides
25 that the “Authorities will provide the fullest mutual assistance,” “to facilitate the performance of
26 securities market oversight functions and the conduct of investigations, litigation or prosecution...”⁸³

27 Cir.1997) (quoting *Somportex Ltd. v. Phila. Chewing Gum Corp.*, 453 F.2d 435,
28 440 (3d Cir.1971)).

⁷⁹ *Society of Lloyd’s v. Hudson*, 276 F.Supp.2d 1110, 1112 (D. Nev. 2003).

⁸⁰ *Hilton v. Guyot*, 159 U.S. 113, 165 (1895).

⁸¹ *Id.* at 123.

⁸² See *S.E.C. v. Lines*, 2009 WL 2431976, p.1 (S.D.N.Y.).

⁸³ Pltf’s Opp & CM Ex 24, Memorandum of Understanding between SEC and BCSC.

Canadian courts, including the British Columbia Courts, have upheld SEC disgorgement judgments on multiple occasions.⁸⁴ One of the more recent cases, *United States (Securities Exchange Commission) v. Peever*, recognized, and permitted enforcement of, an SEC disgorgement judgment, even though the defendant alleged that its purpose was partially penal in nature.⁸⁵ The same Court also gave effect to an SEC disgorgement judgment in *United States (Securities and Exchange Commission) v. Cosby*, holding that “as it is only the disgorgement aspect of the foreign judgment that the plaintiff seeks to enforce, the judgment is not a foreign penal claim and it is enforceable or actionable in this jurisdiction.”⁸⁶ That Court held again, in *United States of America v. Shull*, that the disgorgement order sought to be enforced by the SEC in Canada was “neither a penal sanction nor a taxation measure.”⁸⁷

It is critically important that we maintain our good relations and ties with Canada by giving effect to its Province's judgments, as it gives effect to ours, especially those meant to provide some restoration to the victims of securities fraud. “International law is founded upon mutuality and reciprocity.”⁸⁸ If we want Canada's Provinces to continue to recognize our securities judgments, then we need to recognize theirs.

If we fail to uphold Canada's Provinces' securities judgments, and more particularly, disgorgement judgments, then they may very likely refuse to uphold ours, and in that situation the

///

⁸⁴ See Pltf's Opp & CM Ex 22, *United States (Securities Exchange Commission) v. Peever*, 2013 BCSC 1090 (CanLII); Ex 25, *United States (Securities and Exchange Commission) v. Shull*, [1999] B.C.J. No. 1823 (S.C.); and Pltf's Opp & CM Ex 26, *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338.

⁸⁵ Pltf's Opp & CM Ex 22, *United States (Securities Exchange Commission) v. Peever*, 2013 BCSC 1090 (CanLII).

⁸⁶ Pltf's Opp & CM Ex 26, *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338.

⁸⁷ Pltf's Opp & CM Ex 25, *United States (Securities and Exchange Commission) v. Shull*, [1999] B.C.J. No. 1823 (S.C.).

⁸⁸ *Hilton v. Guyot*, 159 U.S. 113, 228 (1895).

1 citizens of both countries are worse off. U.S. and Nevada citizens who are victimized by securities
2 fraud would be less likely to receive any recompense.

3 **ORDER**

4 Based on the foregoing; the Court finding that it has jurisdiction over the subject matter and
5 the parties hereto, and being otherwise fully advised in the premises and good cause appearing;
6 hereby enters this Judgment.
7

8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that PLAINTIFF'S
9 Countermotion for Summary Judgment is **GRANTED**.

10 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that
11 DEFENDANT'S Motion for Summary Judgment is **DENIED**.
12

13 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's
14 Judgment in the amount of \$21.7 Million CAD, is hereby recognized and entered, and is fully
15 enforceable in the State of Nevada.
16

17 **IT IS ORDERED AND ADJUDGED** that the plaintiff, the BRITISH COLUMBIA
18 SECURITIES COMMISSION, recover of the defendant MICHAEL PATRICK LATHIGEE the sum
19 of \$21,700,000.00 CAD plus interest on that sum at the statutory rate pursuant to NRS 17.130 or, at
20 the option of the judgment debtor, the number of United States dollars which will purchase the
21 Canadian Dollar with interest due, at a bank-offered spot rate at or near the close of business on the
22 banking day next before the day of payment, together with assessed costs of \$1,173.39 United States
23 dollars.
24

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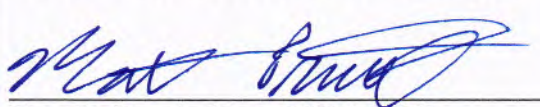
1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that trial deadlines
2 currently on calendar shall be vacated.

3 DATED this 14th day of May, 2018. ^{AE}

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6 **DISTRICT COURT JUDGE**

7 Respectfully Submitted by:

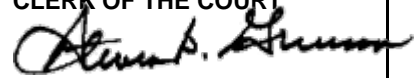
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DISTRICT COURT

CLARK COUNTY, NEVADA

*

BRITISH COLUMBIA SECURITIES
COMMISSION,

CASE NO.: A-18-771407-C
DEPT. NO.: XIV

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Judgment and Order was filed in the above Court on May 14, 2019 a copy of same is attached hereto.

DATED this 14th day of May, 2019

ALVERSON TAYLOR & SANDERS



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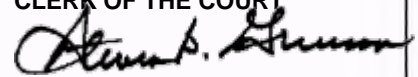
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-*-

BRITISH COLUMBIA SECURITIES
COMMISSION,

CASE NO.: A-18-771407-C
DEPT. NO.: XIV

Plaintiffs,

vs.

MICHAEL PATRICK LATHIGEE,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT**

This matter came before the Court pursuant to Defendant's Motion for Summary Judgment, and Plaintiff's Countermotion for Summary Judgment. At a hearing on December 4, 2018 Matthew Pruitt, Esq. appeared on behalf of Plaintiff, and Jay Adkisson, Esq. appeared on behalf of Defendant.

The Court having reviewed the pleadings and papers on file, being fully advised in the premises, and having heard the arguments of counsel, for reasons stated on the record and good cause appearing therefor, enters the following findings of fact and conclusions of law in this matter.

FINDINGS OF FACT

On March 30, 2018, Plaintiff, BRITISH COLUMBIA SECURITIES COMMISSION, commenced this action by filing a Complaint for recognition of foreign country judgment under the Recognition of Foreign-Country Money Judgments (Uniform Act), found at NRS 17.700 et. seq., and under Comity, naming MICHAEL PATRICK LATHIGEE as a Defendant. Defendant subsequently

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<input type="checkbox"/> Judgment of Arbitration
<input type="checkbox"/> Voluntary Dismissal
<input type="checkbox"/> Involuntary Dismissal
<input type="checkbox"/> Stipulated Dismissal
<input type="checkbox"/> Motion to Dismiss by Deft(s)

1 answered the Complaint on April 9, 2018, and filed an Amended Answer on June 6, 2018. Defendant
 2 filed a Motion for Summary Judgment on October 19, 2018, to which Plaintiff filed its Opposition
 3 and Countermotion on November 9, 2018.

4 A. The Underlying Judgment

5 On March 16, 2015, the British Columbia Securities Commission (the "BCSC") rendered a
 6 decision (the "Decision") against Defendant pursuant to a hearing under British Columbia law and
 7 pursuant to sections 161(1) and 162 of the *Securities Act*, R.S.B.C. 1996, c. 418 (the "BC *Securities*
 8 *Act*").¹ On April 1, 2015, and pursuant to section 163 of the BC *Securities Act*,² the BCSC registered
 9 the Decision with the British Columbia Supreme Court, by which the Decision was deemed to be a
 10 judgment of the British Columbia Supreme Court (the "Judgment").³ The Judgment was appealed by
 11 Defendant, but the appeal was denied by the Court of Appeal for British Columbia on May 31,
 12 2017.⁴ The time for appeal has expired and no appeal is pending.⁵

13 The Judgment is for disgorgement of \$21,700,000.00 CAD, and corresponds to the
 14 \$21,700,000.00 CAD which Defendant was found to have fraudulently raised from 698 investors.⁶
 15 Defendant was also assessed with an administrative penalty of \$15 Million CAD, which was also
 16 registered with the Supreme Court of British Columbia, but the Plaintiff is not requesting that this
 17 related judgment be recognized by this Court.⁷

18 ///

19 ///

20 ///

21 ¹ Pltff's Opp & CM Ex 1, p.1.

22 ² *Id.*

23 ³ *Id.*

24 ⁴ Pltff's Opp & CM Ex 16, BCSC_001996 & BCSC_002047.

25 ⁵ Pltff's Opp & CM Ex 1, p.1.

26 ⁶ *Id.* at Decision § 2.

27 ⁷ *Id.* at Decision § 62(b) (iv).

a. **The Details**

In a decision dated July 8, 2014 (the "Liability Findings"), the BCSC found that Defendant, Mr. Lathigee, together with others (often referred to as the FIC Group), perpetrated a fraud, contrary to section 57(b) of the BC Securities Act when:

- (a) he raised \$21.7 million (CAD) from 698 investors without disclosing to those investors important facts about FIC Group's financial condition; and
- (b) he raised \$9.9 million (CAD) from 331 investors for the purpose of investing in foreclosure properties, and instead used most of the funds to make unsecured loans to other members of the FIC Group, the proceeds of which were used at least in part to pay salaries and other overhead expenses of the FIC Group.⁸

On March 16, 2015, the Commission issued the Decision which included disgorgement orders against the following parties in the following amounts:

- a. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC REAL ESTATE PROJECTS LTD., jointly and severally, \$9,800,000
- b. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, FIC FORECLOSURE FUND LTD., jointly and severally, \$9,900,000
- c. MICHAEL PATRICK LATHIGEE, EARLE DOUGLAS PASQUILL, WBIC CANADA LTD., jointly and severally, \$2,000,000

On April 15, 2015, the Decision was registered in the Vancouver Registry of the British Columbia Supreme Court, pursuant to section 163 of the BC *Securities Act* as a judgment of that Court, under registry file no. L-150117.⁹

The amount of the Judgment ordered to be payable by Michael Patrick Lathigee, jointly and severally with other defendants, excluding administrative penalties, is \$21,700,000 CAD.¹⁰ That

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⁸ Pltff's Opp & CM Ex 1, Judgment, p.1 § 2.

⁹ Pltff's Opp & CM Ex 1, Judgment.

¹⁰ *Id* at p.9 §§ 43, 46, and 49, and p.13 § 62(d).

amount of the Judgment was granted for disgorgement of funds fraudulently obtained from investors, pursuant to section 161(1)(g) of the BC Securities Act.¹¹ Specifically the tribunal stated:

“We find we have the authority to order disgorgement against the individual respondents in this case, up to \$21.7 million, the full amount obtained by fraud.”¹²

“The amounts obtained from investors need not be traced to them specifically and we find that \$21.7 million was obtained, directly or indirectly, as a result of their individual contraventions of the Act.”¹³

“Each respondent’s misconduct contributed to the raising of the \$21.7 million fraudulently. We find that it is in the public interest to order the respondents to pay the full amount obtained as a result of their fraud.”¹⁴

Prior to the proceedings which led to the Judgment, Defendant was served with a Notice of Hearing, dated March 1, 2012, which set forth the allegations and gave a date, time, and location for a hearing.¹⁵ Defendant’s counsel, H. Roderick Anderson of Harper Grey LLP, accepted service of the notice on March 8, 2012, and then appeared for all respondents at the March 20, 2012 hearing.¹⁶ Defendant continued to be represented by such counsel throughout the proceedings of the case.¹⁷ In fact Defendant was afforded at least six days of trial wherein his counsel was able to call and cross-examine witnesses, and present evidence.¹⁸ There is no question regarding personal jurisdiction over Defendant, as Defendant was a resident of British Columbia at all material times during the proceedings.¹⁹

¹¹ See *Id* at p.7 § 34-37.

¹² *Id* at p.9 § 43.

¹³ *Id* at p.9 § 46.

¹⁴ *Id* at p.9 § 49.

¹⁵ Pltf’s Opp & CM Ex 2, Notice of Hearing, BCSC_000054-000067.

¹⁶ Pltf’s Opp & CM Ex 3, Transcript of March 20, 2012 Hearing, at 2:8-12.

¹⁷ See Pltf’s Opp & CM Ex 4, Transcript of April 11, 2012 Hearing, at 1:25-27; Ex 5, Transcript of September 16, 2013 Proceedings, at 0:5-8; Ex 6, Transcript of September 17, 2013 Proceedings, at 1:15-20; Ex 7, Transcript of September 18, 2013 Proceedings; Ex 8, Transcript of September 19, 2013 Proceedings; Ex 9, Transcript of September 20, 2013 Proceedings; Ex 10, Transcript of September 21, 2013 Proceedings; Ex 11, Transcript of September 23, 2013 Proceedings; Ex 12, Transcript of September 24, 2013 Proceedings.

¹⁸ *Id*.

¹⁹ See Pltf’s Opp & CM Declaration of Plaintiff § 9.

1 Ultimately Defendant was found liable for fraud, and the findings on liability were set forth
 2 by the BCSC on July 8, 2014.²⁰ Another Notice of Hearing was served on Defendant on October 16,
 3 2014, giving a date and time for hearing on sanctions.²¹ A hearing on sanctions was held on February
 4 13, 2015, which was again attended by Defendant's counsel.²² The BCSC's decision on sanctions
 5 was set forth on March 16, 2015, wherein disgorgement was ordered against Defendant.²³
 6

7 Defendant was granted leave to appeal the decisions of the BCSC to the Court of Appeal for
 8 British Columbia, with the Court of Appeal, after hearing submission of counsel for Defendant,
 9 unanimously dismissing the appeal by order pronounced May 31, 2017, as a result of which the
 10 Judgment, including the disgorgement order, remains in full force and effect.²⁴
 11

12 As set forth in the Decision, given that the Defendant is "permanently prohibited" from
 13 engaging in investment activities in British Columbia, and such other Canadian jurisdictions in
 14 which a reciprocal may have been made, he instead has based his operations in Nevada.²⁵ Defendant
 15 has been involved in operations of at least 19 entities in Nevada, the latest being "LVIC
 16 BLOCKCHAIN AND CRYPTOCURRENCY FUND LLC".²⁶
 17

18 **B. Canadian Disgorgement Law**

19 In regard to enforcement of securities law, whereas the U.S. has the federal Securities
 20 Exchange Commission (the "SEC"), Canada has thirteen such organizations, one for each province
 21 and territory of Canada. The BCSC is the senior provincial securities regulator for the province of
 22 British Columbia.
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24 ²⁰ Pltff's Opp & CM Ex 13, Panel Findings on Liability, BCSC_1512-1577.

25 ²¹ Pltff's Opp & CM Ex 14, Notice of Hearing dated October 16, 2014, BCSC_001692.

26 ²² Pltff's Opp & CM Ex 15, Transcript of February 13, 2015 Hearing.

27 ²³ Pltff's Opp & CM Ex 1, Judgment.

28 ²⁴ Pltff's Opp & CM Ex 16, Appellate Court Decision, BCSC_001996-002047, at BCSC_002047 § 167.

²⁵ See Pltff's Opp & CM Ex 1, Judgment § 62(b).

²⁶ Pltff's Opp & CM Ex 17, Lathigee Corporate Vehicles.

The statute under which the Judgment was granted provides, in s. 161(1)(g), for the judgment debtor to “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.”²⁷ If the Commission recovers money pursuant to a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud can submit an application to have such funds distributed to them.²⁸ Pursuant to section 15.1 of the *BC Securities Act*, and Securities Regulation 196-97 enacted under that statute, it is *mandatory* that the Commission distribute disgorgement funds to proper claimants, and it is therefore the Commission’s strict mandate to do so.²⁹ This is illustrated by the fact that the Commission advertises on its website, under a section entitled “Returning Funds to Investors,” the cases which have received funds pursuant to a judgment under section 161(1)(g), and provides guidance to victims on how they can lay claim to such funds.³⁰ In other words, disgorgement orders made under 161(1)(g) of the *BC Securities Act* are not fines or penalties, but are orders for the funds to be disgorged from the judgment-debtor for any amounts obtained, directly or indirectly, as a result of the judgment-debtor’s misconduct, to then by the Commission to repay the individuals harmed by the judgment-debtor’s misconduct.

Further, any remaining funds, after payment of the claims of investors, are to be used by the BCSC for investor education, and not taken in as general revenue or used for operating expenses.

The Commission must follow the claims process set forth by law to distribute the disgorgement funds to proper claimants.³¹ As such, these funds are compensatory in nature.

²⁷ Pltf’s Opp & CM Ex 19, *Canada Securities Act* [RSBC 1996] Chapter 418, Part 18, § 161(1)(g).

²⁸ *Id* at Part 3, § 15.1.

²⁹ *Id* at Part 3, § 15.1; See Pltf’s Opp & CM Declaration of Plaintiff § 6; Pltf’s Opp & CM Ex 20, *Securities Regulation*, B.C. Reg. 196/97, Ministerial Regulation M244/97, Part 3, § 7.4(6).

³⁰ Pltf’s Opp & CM Ex 21, BCSC Website, “Returning Funds to Investors,” accessed August 30, 2018.

³¹ Pltf’s Opp & CM Ex 19, *Canada Securities Act* [RSBC 1996] Chapter 418, Part

Penalties and fines were dealt with separately by the orders made by the Commission's panel. Defendant has an additional judgment against him in the amount of \$15 Million CAD for administrative penalties.³² These fines and penalties are set forth separately from the portion of the Judgment for disgorgement, for which the Commission seeks recognition before this Court. Plaintiff's expert has stated unequivocally that disgorgement is a remedy, and not a penalty.³³ Canadian case law, and particularly case law in British Columbia, holds that disgorgement is not a penalty.³⁴ In *United States (Securities Exchange Commission) v. Peever*, the British Columbia Court recognized a US SEC disgorgement order, finding that evidence of the SEC's policy to distribute proceeds of the judgment to injured investors, even when not strictly required to do so, was enough to recognize the judgment and not deem it a penalty for purposes of recognition.³⁵

CONCLUSIONS OF LAW

A. Motion for Summary Judgment Standard.

The primary purpose of a summary judgment procedure is to secure a "just, speedy, and inexpensive determination of any action."³⁶ Although summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist, it enables the trial court to "avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried."³⁷ "Summary judgment is appropriate if, when viewed in the light most

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¹⁸, § 161(1)(g).

³² Pltf's Opp & CM Ex 1, Judgment, §§ 18(b), 62(b) (iv-v (erroneously labeled iv)).

³³ Pltf's Opp & CM Ex 30, Plaintiff's Expert's Report p. 3-4.

³⁴ Pltf's Opp & CM Ex 22, *US (SEC) v. Peever*, 2013 BCSC 1090, §§ 27-29.

³⁵ *Id.*

³⁶ *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964); accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 123 P.3d 748, 750 (Nev. 2005).

³⁷ *Id.*

1 favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and
2 the moving party is entitled to judgment as a matter of law."³⁸

3 Parties resisting summary judgment cannot stand on their pleadings once the movant has
4 submitted affidavits or other similar materials.³⁹ Though inferences are to be drawn in favor of the
5 non-moving party, an opponent to summary judgment must show that he can produce evidence at
6 trial to support his claim.⁴⁰ The Nevada Supreme Court has rejected the "slightest doubt" standard,
7 under which any dispute as to the relevant facts defeats summary judgment.⁴¹ A party resisting
8 summary judgment "is not entitled to build a case on the gossamer threads of whimsy, speculation,
9 and conjecture."⁴² Rather, the non-moving party must demonstrate specific facts as opposed to
10 general allegations and conclusions.⁴³ Indeed, an opposing party "is not entitled to have [a] motion
11 for summary judgment denied on the mere hope that at trial he will be able to discredit movant's
12 evidence; he must at the hearing be able to point out to the court something indicating the existence
13 of a triable issue of fact."⁴⁴

14 **B. British Columbia Disgorgement Judgments Must be Recognized Pursuant to**
15 **NRS 17.700 – 17.820**

16 The Judgment in issue was pronounced by the BCSC, and recognized as a judgment of the
17 British Columbia Supreme Court and, subsequently upheld on appeal. The Judgment is, in all
18 respects, a foreign-country judgment, being a judgment of one of the superior courts of Canada.
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23 ³⁸ NRCP 56(c); *DTJ Design, Inc. v. First Republic Bank*, 318 P.3d 709, 710
(Nev. 2014).

24 ³⁹ NRCP 56(e).

25 ⁴⁰ *Van Cleave v. Kietz-Mill Minit Mart*, 633 P.2d 1220, 1222 (Nev. 1981).

26 ⁴¹ *Wood v. Safeway*, 121 P.3d at 1031.

27 ⁴² *Collins v. Union Fed. Savings & Loan*, 622 P.2d 610, 621 (Nev. 1983).

28 ⁴³ *LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev. 2002); *Wayment v. Holmes*, 912
P.2d 816, 819 (Nev. 1996).

⁴⁴ *Hickman v. Meadow Wood Reno*, 617 P.2d 871, 872 (Nev. 1980); see also *Aldabe*
v. Adams, 402 P.2d 34, 37 (Nev. 1965) ("The word 'genuine' has moral
overtones; it does not mean a fabricated issue."); *Elizabeth E. v. ADT Sec.*
Sys. W., 839 P.2d 1308, 1310 (Nev. 1992).

1 A Nevada court “shall recognize a foreign-country judgment,” to which NRS 17.700 to
 2 17.820 apply, except as provided for under NRS 17.750 sections 2 and 3.⁴⁵ NRS 17.740 sets forth the
 3 applicability of NRS 17.700 to 17.820. It states that such statutes apply to the extent that the
 4 judgment “(a) Grants or denies recovery of a sum of money; and (b) Under the law of the foreign
 5 country where rendered, is final, conclusive and enforceable.”⁴⁶ Further, it provides that such statutes
 6 do not apply to the extent that the judgment is “(a) A judgment for taxes; (b) A fine or other penalty;
 7 or (c) A judgment for divorce, support or maintenance or other judgment rendered in connection with
 8 domestic relations.”⁴⁷

10 Defendant admits in its responses to Plaintiff’s Requests for Admission numbers 1-4, that the
 11 Judgment, against Defendant is final, conclusive and enforceable under the laws of Canada, that the
 12 time for appeal has expired, that no payments have been made, and that the Judgment is not for taxes
 13 or domestic relations.

15 In addition to Defendant’s admissions, the Commission has clearly proven that the Judgment
 16 grants the recovery of a sum of money, and that under the laws of British Columbia specifically, and
 17 Canada generally, the Judgment is final, conclusive and enforceable.⁴⁸ The certificate of the British
 18 Columbia Supreme Court, exemplifying the Judgment, states that:

20 “The Decision was entered as a Judgment on April 1, 2015.”⁴⁹

21 “The Time for appeal has expired and no appeal is pending under s. 167 of the
 22 *Securities Act*.”⁵⁰

23 “With no payments being made, and the full amount remaining due on the Judgment,
 24 as noted above”⁵¹

25 ⁴⁵ NRS 17.750(1) .

26 ⁴⁶ NRS 17.740(1) .

27 ⁴⁷ NRS 17.740(2) .

28 ⁴⁸ See Pltf’s Opp & CM Ex 1, Judgment.

⁴⁹ Pltf’s Opp & CM Ex 1, Judgment, § 3.

⁵⁰ *Id* at § 4.

⁵¹ *Id* at § 6.

1 Additionally, the Judgment is not a judgment for taxes or domestic relations as
2 acknowledged by Defendant's First Amended Answer.⁵²

3 **a. Defendant Waived or Withdrawn all of His Affirmative Defenses to**
4 **Recognition of Foreign Country Judgment under NRS 17.700 – 17.820,**
5 **Except for the Argument that the Judgment is a Penalty**

6 The only grounds for denying recognition of a foreign-country judgment to which the
7 Recognition of Foreign-Country Money Judgments act is applicable are found in NRS 17.750(2) and
8 (3):

9 “2. A court of this State may not recognize a foreign-country judgment if:

- 10 (a) The judgment was rendered under a judicial system that does not provide
11 impartial tribunals or procedures compatible with the requirements of due process of
12 law;
13 (b) The foreign court did not have personal jurisdiction over the defendant; or
14 (c) The foreign court did not have jurisdiction over the subject matter.”

15 “3. A court of this State need not recognize a foreign-country judgment if:

- 16 (a) The defendant in the proceeding in the foreign court did not receive notice
17 of the proceeding in sufficient time to enable the defendant to defend;
18 (b) The judgment was obtained by fraud that deprived the losing party of an
19 adequate opportunity to present its case;
20 (c) The judgment or the cause of action on which the judgment is based is
21 repugnant to the public policy of this State or of the United States;
22 (d) The judgment conflicts with another final and conclusive judgment;
23 (e) The proceeding in the foreign court was contrary to an agreement between
24 the parties under which the dispute in question was to be determined otherwise than
25 by proceedings in that foreign court;
26 (f) In the case of jurisdiction based only on personal service, the foreign court
27 was a seriously inconvenient forum for the trial of the action;
28 (g) The judgment was rendered in circumstances that raise substantial doubt
about the integrity of the rendering court with respect to the judgment; or
(h) The specific proceeding in the foreign court leading to the judgment was
not compatible with the requirements of due process of law.”

“4. A party resisting recognition of a foreign-country judgment has the burden
of establishing that a ground for nonrecognition stated in subsection 2 or 3 exists.”

⁵² Pltff's Opp & CM Ex 18, Defendant's First Amended Answer § 17.

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Judging from Defendant's affirmative defenses, Defendant previously rested its defense on §§ 2(a), 3(g) and 3(h). Defendant, however, has waived or withdrawn each of these defenses. In response to Plaintiff's Request for Admission No. 11, Defendant states "Defendant hereby withdraws his lack of due process claim other than as may be affected by defendant's defense that the Disgorgement Judgment is a penalty..."⁵³ Defendant further admits that he was represented by counsel in the proceedings against him, that multiple hearings were held in the proceedings against him, and that he received notice of those hearings.⁵⁴ Defendant further expressly withdraws any claim that the proceedings were inherently biased, that the judgment was rendered in circumstances raising doubts about the integrity of the BCSC, that the proceedings were not compatible with US due process, and that the BCSC delayed this action.⁵⁵

Through its discovery responses, Defendant has waived, or withdrawn, its first, third, fourth, and fifth affirmative defenses. Defendant even waived his second affirmative defense through his Motion for Summary Judgment, which states, "Defendant Lathigee asserts but a single defense that is common to both the NUF-CMJRA and to comity, which is that the Disgorgement Order is in the nature of a fine or penalty."⁵⁶ This leaves only one affirmative defense, that the Judgment "is clearly denoted as a 'sanction' and is otherwise a fine and/or penalty that is not subject to recognition or to comity."⁵⁷

b. Plaintiff's Judgment is not a Penalty

The Restatement (Second) of Conflict of Laws states, "A valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying cause of action are concerned." Plaintiff has a valid

⁵³ See Pltff's Opp & CM Ex 28, Def's Rsps to Pltff's RFAs, Response No. 11.

⁵⁴ See Pltff's Opp & CM Ex 28, Def's Rsps to Pltff's RFAs, Responses No. 12-14.

⁵⁵ See Pltff's Opp & CM Ex 29, Def's Rsps to Pltff's ROGs, Responses No. 2-4, & 6.

⁵⁶ Def's MSJ, Memorandum 1:21-23.

1 disgorgement judgment rendered by the courts of British Columbia Canada after a fair trial in a
2 contested proceeding.

3 The US Supreme Court, in *Kokesh v. S.E.C.*, adopted the position of the Restatement (Third)
4 of Restitution and Unjust Enrichment § 51, Comment a, p. 204 (2010), by holding that
5 “disgorgement is a form of ‘[r]estitution measured by the defendant’s wrongful gain.’”⁵⁸ The
6 Restatement (Fourth) of Foreign Relations Law of the United States makes clear that “A judgment
7 in favor of a foreign state awarding restitution for the benefit of private persons is not penal...” As
8 this is a case of first impression in Nevada on this subject matter, and is believed to be so also in the
9 United States, this Court adopts the law of Section 489 cmt. 4 of the Restatement (Fourth) of
10 Foreign Relations Law of the United States as the law of Nevada, and holds that disgorgement
11 judgments are restitutionary under US law and *Kokesh*, and are not penal for purposes of
12 recognition of foreign judgments.

13 In particular this Court finds that the British Columbia judgment sought to be recognized by
14 this Court is not penal, but is a form of restitution, as the funds collected under British Columbia
15 disgorgement judgments are mandated by law to become subject to a claims process in which the
16 judgment funds are used to restore the losses of victims affected by the fraud on which the judgment
17 is based. The statute under which the judgment was granted provides for the judgment debtor to
18 “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a
19 result of the failure to comply or the contravention.”⁵⁹ If the commission receives money pursuant to
20 a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud
21 can submit an application to have such funds distributed to them.⁶⁰ Pursuant to section 15.1 of the
22
23
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25

26 ⁵⁷ Pltff’s Opp & CM Ex 18, Def’s Amended Answer, p. 3-4.

27 ⁵⁸ *Kokesh v. S.E.C.*, 137 S.Ct. 1635, 1640 (2017).

28 ⁵⁹ Pltff’s Opp & CM Ex 2, Canada Securities Act [RSBC 1996] Chapter 418, Part 18, § 161(1)(g).

⁶⁰ *Id* at Part 3, § 15.1.

1 BC *Securities Act*, and Securities Regulation 196-97, it is *mandatory* that the BCSC distribute
 2 disgorgement funds to proper claimants, and it is therefore the BCSC's strict policy to do so.⁶¹
 3 Whatever the "purpose" of the law, clearly the effect is to compensate victims – something the law
 4 mandates by its terms.
 5

6 In this particular case, Plaintiff's judgment is dollar for dollar a disgorgement of amounts
 7 actually held by British Columbia's securities regulator to have been fraudulently taken from
 8 individual investors. The effect of the disgorgement judgment then is to take back those funds
 9 actually taken from individual investors, and to grant restitution to victims through the legally-
 10 mandated claims process.
 11

12 *Kokesh*

13 While this Court has considered the *Kokesh* court's defining disgorgement as penal for the
 14 purposes of a US statute of limitations period, this part of *Kokesh* applies only to US disgorgement,
 15 as the *Kokesh* court specifically stated "We hold that **SEC disgorgement** constitutes a penalty."⁶²
 16

17 While *Kokesh* is persuasive coming from the US Supreme Court, this Court does not believe
 18 *Kokesh* is binding or even on point for this particular matter, because the *Kokesh* court limited its
 19 application to SEC disgorgement, and the case was strictly in regard to a statute of limitations
 20 matter. While in *Kokesh* the statute of limitations matter was a black and white test of whether the
 21 cause of action would be held to a certain time frame requirement, the issue of a judgment being a
 22 penalty for purposes of recognizing foreign country judgments is a very different analysis, wherein
 23 this Court recognizes that "Enforcement of a judgment affording a private remedy is not barred ...
 24

25 ///

26
 27 ⁶¹ *Id* at Part 3, § 15.1; See Pltf's Opp & CM Declaration of Plaintiff § 6; Pltf's
 28 Opp & CM Ex 3, Securities Regulation, B.C. Reg. 196/97, Ministerial Regulation
 M244/97, Part 3, § 7.4(6).

⁶² *Kokesh v. S.E.C.*, 137 S.Ct. 1635, 1642 (2017) (*emphasis added*).

1 because it is joined with, or awarded in the same proceeding as, a judgment the enforcement of
2 which would be barred...” such as a penalty.⁶³

3 In other words, the *Kokesh* court effectively held that because the judgment in that case was
4 partially penal, it was held to a particular statute of limitations, but in the analysis of recognizing
5 foreign judgments, a partially penal purpose is not dispositive, as the penal portion of a judgment
6 can be separated from the restitution portion of the judgment, and the restitution portion given full
7 recognition. This Court holds that the entire \$21.7 Million judgment sought to be recognized in this
8 case is restitution under US and Nevada law, and should be recognized in its entirety.
9

10 *Huntington*

11 This Court has also considered the decision in *Huntington v. Attrill*.⁶⁴ *Huntington* did not
12 involve a disgorgement judgment, or even a foreign country judgment, but it instead determined that
13 the Full Faith and Credit Clause does not apply to penal judgments.⁶⁵ So it did not say that courts
14 could not recognize penal judgments, but instead decided only the constitutional question of whether
15 courts were *required* to recognize them under the Full Faith and Credit Clause.⁶⁶ While *Huntington*
16 does not apply to foreign country judgments, the court developed a test for whether a sister-state
17 judgment is penal, determining that the penal status of such a judgment “depends upon the question
18 whether its purpose is to punish an offense against the public justice of the state, or to afford a
19 private remedy to a person injured by the wrongful act.”⁶⁷
20
21

22 While *Huntington*'s test is not binding on this case, because it does not apply to foreign
23 country judgments, the test still leads to a conclusion that a British Columbia disgorgement judgment
24

25 ⁶³ Restatement (Fourth) of Foreign Relations Law of the United States § 489
26 cmt. d.

27 ⁶⁴ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

28 ⁶⁵ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 538
(2011).

⁶⁶ *Id.*

⁶⁷ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

1 is not a penalty. As discussed at length herein and in Plaintiff's Countermotion, such a judgment's
2 purpose is not to punish an offense against the public justice of the state, but to disgorge the
3 Defendant of his ill-gotten gains, and then those gains are mandatorily returned to the claimants who
4 are Defendant's victims.⁶⁸

5
6 The British Columbia disgorgement judgment does not perfectly fall into the *Huntington*
7 test, but it is much more similar, for the purpose of this analysis, to a private remedy than a
8 punishment. The funds from disgorgement orders are strictly required to compensate victims and
9 not go into the general operating revenue.⁶⁹ This is different from administrative penalties which
10 don't compensate victims.⁷⁰

11
12 The more appropriate test to follow in this case is that which is set forth by the Restatement
13 (Fourth) of Foreign Relations of the United States, which states that when the judgment (1) is in
14 favor of a foreign state, and (2) results in restitution for the benefit of private persons, then it is not a
15 penalty.⁷¹

16 ***Oakland***

17 This Court has also considered the decision in *City of Oakland v. Desert Outdoor*
18 *Advertising, Inc.*⁷² The *Oakland* case focused on a judgment with a strictly public purpose where no
19 private injury was had, and no right to compensation for individuals existed. Indeed, the judgment
20 in the *Oakland* case came from a municipal code violation for the erection of a billboard determined
21 to be a public nuisance.⁷³ Plaintiff's judgment is not for some public nuisance, but for the
22 disgorgement of stolen funds and profits, and a return of such funds to Defendant's victims.
23
24

25 ⁶⁸ See Pltf's Reply Declaration of Plaintiff § 4.

26 ⁶⁹ See Pltf's Reply Declaration of Plaintiff § 5.

27 ⁷⁰ *Id.*

28 ⁷¹ Restatement (Fourth) of Foreign Relations Law of the United States § 489 n. 4; see also § 489(b).

⁷² *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534 (2011).

Plaintiff's judgment is not the result of some municipal code prescribing penalties and fines, like a traffic ticket or zoning violation, but is a judgment based on important securities regulations which provide disgorgement which results in those funds being available to victims of the fraud.⁷⁴

C. British Columbia Disgorgement Judgments May be Recognized Pursuant to Principles of Comity

NRS 17.820 states that "NRS 17.700 to 17.820, inclusive, do not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of NRS 17.700 to 17.820, inclusive." Under that authority, this Court finds good cause for recognizing Plaintiff's judgment under both NRS 17.700 – 17.820, and comity.

A Court may grant comity in recognizing a foreign country judgment even if the judgment is a tax, fine or penalty, as nonrecognition in such cases is permitted but not required.⁷⁵

"[C]omity is a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect."⁷⁶

"A court applying the principle of comity should consider the 'duties, obligations, rights and convenience of its own citizens and of persons who are within the protection of its jurisdiction.'"⁷⁷

Comity is a rule of practice, convenience, and expediency, rather than rule of law, that courts have embraced to promote cooperation and reciprocity with foreign lands.⁷⁸ Principles of Comity are embraced by both Canada and the United States, in each of their respective Provinces and States, as the two close countries endeavor to promote cooperation and offer reciprocity between two similar legal systems.

⁷³ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534 (2011).

⁷⁴ See Pltff's Reply Declaration of Plaintiff § 4.

⁷⁵ Restatement (Third) of Foreign Relations Law of the United States, § 483 cmt a ("Nonrecognition not required but permitted").

⁷⁶ *In re Chao-Te*, 2015 WL 3489560, p.2 (Nev.) (citing *Miannecki v. Second Judicial Dist. Court*, 99 Nev, 93, 98, 658 P.2d 422, 424-25 (1983)).

⁷⁷ *Id.*

⁷⁸ *Mujica v. AirScan, Inc.*, 771 F.3d 580, 598 (9th Cir. 2014) (citing *Pravin Banker Assocs., Ltd. v. Banco Popular Del Peru*, 109 F.3d 850, 854 (2d

1 While Courts should consider whether due process was given in their decision to grant
2 comity, such requires only that the basic requisites for due process are necessary – including notice
3 and a hearing.⁷⁹ The seminal comity case, *Hilton v. Guyot*, declares:

4 “[Comity] contributes so largely to promote justice between individuals, and to
5 produce a friendly intercourse between the sovereignties to which they belong, that
6 courts of justice have continually acted upon it as a part of the voluntary law of
7 nations.”⁸⁰

8 “Where there has been opportunity for a full and fair trial before a foreign court of
9 competent jurisdiction, conduction the trial on regular proceedings, after due citation
10 of voluntary appearance of the defendant, and under a system of jurisprudence likely
11 to secure an impartial administration of justice between the citizens of that country
12 and those of other countries, and there is nothing to show either prejudice in the
13 court, or in the system of laws under which it was sitting, or fraud in procuring the
14 judgment, or any other special reason why the comity of the United States should not
15 allow it full effect, the merits of the case should not, in an action brought in this
16 country on the judgment, be tried afresh, as on a new trial or an appeal, upon the
17 mere assertion of a party that the judgment was erroneous in law or in fact.”⁸¹

18 Canada and the U.S. have a long history together as two nations which sprung up in close
19 proximity at similar times. The two nations’ legal systems are largely similar, as they both arose from
20 British and European jurisprudence.

21 The SEC and securities commissions of each of the Provinces, including the BCSC, often
22 work together, as the nature of the proximity and relations of the two countries makes it easy for
23 fraud to move between the countries.⁸² The U.S. and many provinces of Canada are actually parties
24 to a Memorandum of Understanding, to which the SEC and BCSC are signatories, which provides
25 that the “Authorities will provide the fullest mutual assistance,” “to facilitate the performance of
26 securities market oversight functions and the conduct of investigations, litigation or prosecution...”⁸³

27 Cir.1997) (quoting *Somportex Ltd. v. Phila. Chewing Gum Corp.*, 453 F.2d 435,
28 440 (3d Cir.1971)).

⁷⁹ *Society of Lloyd’s v. Hudson*, 276 F.Supp.2d 1110, 1112 (D. Nev. 2003).

⁸⁰ *Hilton v. Guyot*, 159 U.S. 113, 165 (1895).

⁸¹ *Id.* at 123.

⁸² See *S.E.C. v. Lines*, 2009 WL 2431976, p.1 (S.D.N.Y.).

⁸³ Pltf’s Opp & CM Ex 24, Memorandum of Understanding between SEC and BCSC.

Canadian courts, including the British Columbia Courts, have upheld SEC disgorgement judgments on multiple occasions.⁸⁴ One of the more recent cases, *United States (Securities Exchange Commission) v. Peever*, recognized, and permitted enforcement of, an SEC disgorgement judgment, even though the defendant alleged that its purpose was partially penal in nature.⁸⁵ The same Court also gave effect to an SEC disgorgement judgment in *United States (Securities and Exchange Commission) v. Cosby*, holding that “as it is only the disgorgement aspect of the foreign judgment that the plaintiff seeks to enforce, the judgment is not a foreign penal claim and it is enforceable or actionable in this jurisdiction.”⁸⁶ That Court held again, in *United States of America v. Shull*, that the disgorgement order sought to be enforced by the SEC in Canada was “neither a penal sanction nor a taxation measure.”⁸⁷

It is critically important that we maintain our good relations and ties with Canada by giving effect to its Province's judgments, as it gives effect to ours, especially those meant to provide some restoration to the victims of securities fraud. “International law is founded upon mutuality and reciprocity.”⁸⁸ If we want Canada's Provinces to continue to recognize our securities judgments, then we need to recognize theirs.

If we fail to uphold Canada's Provinces' securities judgments, and more particularly, disgorgement judgments, then they may very likely refuse to uphold ours, and in that situation the

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⁸⁴ See Pltf's Opp & CM Ex 22, *United States (Securities Exchange Commission) v. Peever*, 2013 BCSC 1090 (CanLII); Ex 25, *United States (Securities and Exchange Commission) v. Shull*, [1999] B.C.J. No. 1823 (S.C.); and Pltf's Opp & CM Ex 26, *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338.

⁸⁵ Pltf's Opp & CM Ex 22, *United States (Securities Exchange Commission) v. Peever*, 2013 BCSC 1090 (CanLII).

⁸⁶ Pltf's Opp & CM Ex 26, *United States (Securities and Exchange Commission) v. Cosby*, 2000 BCSC 338.

⁸⁷ Pltf's Opp & CM Ex 25, *United States (Securities and Exchange Commission) v. Shull*, [1999] B.C.J. No. 1823 (S.C.).

⁸⁸ *Hilton v. Guyot*, 159 U.S. 113, 228 (1895).

1 citizens of both countries are worse off. U.S. and Nevada citizens who are victimized by securities
2 fraud would be less likely to receive any recompense.

3 **ORDER**

4 Based on the foregoing; the Court finding that it has jurisdiction over the subject matter and
5 the parties hereto, and being otherwise fully advised in the premises and good cause appearing;
6 hereby enters this Judgment.

7
8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that PLAINTIFF'S
9 Countermotion for Summary Judgment is **GRANTED**.

10 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that
11 DEFENDANT'S Motion for Summary Judgment is **DENIED**.

12 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's
13 Judgment in the amount of \$21.7 Million CAD, is hereby recognized and entered, and is fully
14 enforceable in the State of Nevada.

15 **IT IS ORDERED AND ADJUDGED** that the plaintiff, the BRITISH COLUMBIA
16 SECURITIES COMMISSION, recover of the defendant MICHAEL PATRICK LATHIGEE the sum
17 of \$21,700,000.00 CAD plus interest on that sum at the statutory rate pursuant to NRS 17.130 or, at
18 the option of the judgment debtor, the number of United States dollars which will purchase the
19 Canadian Dollar with interest due, at a bank-offered spot rate at or near the close of business on the
20 banking day next before the day of payment, together with assessed costs of \$1,173.39 United States
21 dollars.

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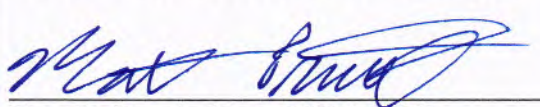
1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that trial deadlines
2 currently on calendar shall be vacated.

3 DATED this 14th day of May, 2018. ^{AE}

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5 
6 **DISTRICT COURT JUDGE**

7 Respectfully Submitted by:

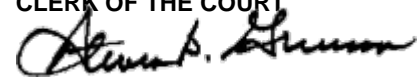
8 **ALVERSON TAYLOR & SANDERS**

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Steven D. Grierson
CLERK OF THE COURT



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Counsel for Defendant,
Michael Patrick Lathigee

STATE OF NEVADA
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY
Hon. Adriana Escobar, District Judge

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE,

Defendant.

Case No. A-18-771407-C {Dept. 14}

NOTICE OF APPEAL

Defendant, Michael Patrick Lathigee ("Lathigee"), by and through his attorney of record, Jay D. Adkisson, hereby appeals to the Supreme Court of Nevada from the **Findings of Fact, Conclusions of Law and Judgment**, entered herein on May 14, 2019., which constitutes the final judgment entered in this Court.

//

Dated this 17th day of May, 2019, by:

/s/ Jay D. Adkisson

Jay D. Adkisson
Counsel for Defendant
Michael Patrick Lathigee

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CERTIFICATE OF SERVICE

The following signature certifies that on the date of e-filing, a full, true, and correct copy of the above and foregoing document was served electronically via Nevada e-filing and deposited in the U.S. Mail, with correct first-class postage affixed thereto, and address to counsel for the Plaintiff, British Columbia Securities Commission, to wit:

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Matthew M. Pruitt, SBN 12474
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/s/ Jay D. Adkisson
Jay D. Adkisson