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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

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SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

DAREN L. PALMER and TRIGON GROUP, INC., a  
Nevada Corporation,

DEFENDANTS.

Civil No. 09-075-S-EJL

Judge Edward J. Lodge  
Magistrate Larry M. Boyle

**MEMORANDUM IN  
SUPPORT OF  
PLAINTIFF'S MOTION  
FOR SUMMARY  
JUDGMENT AGAINST  
DAREN L. PALMER**

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Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff, Securities and Exchange Commission (the “Commission”), by and through its counsel of record, hereby submits this Memorandum in Support of Motion for Summary Judgment against Daren L. Palmer (“Palmer”). As set forth below, the undisputed facts prove that Palmer violated the antifraud and registration requirements of the federal securities laws and acted as an unregistered broker in operating a classic Ponzi scheme. These undisputed facts establish that the Commission is entitled to summary judgment as a matter of law.

## **I. INTRODUCTION**

Since at least 1996, Daren Palmer (“Palmer”) operated a classic Ponzi scheme, offering unregistered Trigon Group, Inc. (“Trigon”) securities to investors and using funds from new investors to pay bogus returns to earlier investors. Palmer recruited investors through material misrepresentations and omissions. By engaging in this conduct, Palmer violated, and unless enjoined will continue to violate, the securities registration, antifraud, and broker-dealer registration provisions of the Securities Act of 1933 (the “Securities Act”) and the Securities Exchange Act of 1934 (the “Exchange Act”).

## **II. SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate when the moving party submits evidence showing “there is no genuine issue as to any material fact and...the party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-26 (1986). Once the moving party carries its burden of production, the non-moving party must come forward with specific facts to support its claim. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The non-moving party “must do more than simply show that there is some metaphysical doubt as to material facts. Id. at 586. “The mere existence of a

scintilla of evidence in support of the [non-moving party's] position will be insufficient.”

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Rather, there must be sufficient evidence for the jury to return a verdict for a nonmoving party. Id. “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” Id. at 249-50 (citations omitted). If the non-moving party fails to produce the required evidence, the moving party must prevail on its Motion for Summary Judgment. Celotex Corp., 477 U.S. at 322; Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc., 210 F.3d 1099, 1103 (9th Cir. 2000).

### III. STATEMENT OF UNDISPUTED FACTS

#### A. THE DEFENDANTS

1. **Trigon Group, Inc.** (“Trigon”) was a Nevada corporation headquartered in Idaho Falls, Idaho. Trigon claimed to be an investment business that specialized in helping clients generate high annual returns of approximately 20-25 percent per year. See Articles of Organization, attached hereto as Exhibit 1 (“Ex. 1”); Declaration of Stephen Crandall (“Crandall Decl.”), attached hereto as Exhibit 16 (“Ex. 16”) at ¶ 3; Declaration of Reed Raymond (“Raymond Decl.”), attached hereto as Exhibit 17 (“Ex. 17”) at ¶ 4; Declaration of Bruce Jones (“Jones Decl.”), attached hereto as Exhibit 18 (“Ex. 18”) at ¶ 9.
2. Trigon never registered any offering of its securities under the Securities Act of 1933 (“Securities Act”) or any class of Securities under the Securities and Exchange Act of 1934 (“Exchange Act”). See Declaration of Norman Korb (“Korb Decl.”), attached hereto as Exhibit 3 (“Ex. 3”) at ¶ 3; Deposition of Daren L. Palmer, attached hereto as Exhibit 14 (“Ex. 14”) at p. 6.

3. **Daren L. Palmer** (“Palmer”), age 41, is an Idaho resident living in Idaho Falls, Idaho. See Testimony of Daren L. Palmer, attached hereto as Exhibit 2 (“Ex. 2”) at p. 4. Palmer attended Ricks College for two years, received a degree in Finance from the University of Utah in 1995, and then worked as a financial representative at a finance company called American General. Id. at pp. 8-9, 58. Palmer was the President and owner of Trigon. Id. at pp. 10-11.

## **B. BACKGROUND**

4. Beginning in 1996 and continuing through at least October 2008, Trigon and Palmer sold securities in the form of promissory notes and investment contracts to over 55 investors in unregistered, non-exempt transactions amounting to over \$60 million. Ex. 2 at pp. 26-32, 100; Ex. 3 at ¶ 3; Declaration of Jay Lane Butler (“Butler Decl.”), attached hereto as Exhibit 4 (“Ex. 4”) at ¶ 6; Declaration of Kevin Taggart (“Taggart Decl.”), attached hereto as Exhibit 5 (“Ex. 5”) at ¶¶ 3, 6; Declaration of David K. Swenson (“Swenson Decl.”), attached hereto as Exhibit 6 (“Ex. 6”) at ¶ 8; Declaration of Darryl Harris (“Harris Decl.”), attached hereto as Exhibit 7 (“Ex. 7”) at ¶ 5; Declaration of David Taylor (“Taylor Decl.”), attached hereto as Exhibit 8 (“Ex. 8”) at ¶¶ 4-5, 9; Declaration of Jack Larsen (“Larsen Decl.”), attached hereto as Exhibit 9 (“Ex. 9”) at ¶ 4; Declaration of Paul Ramsey (“Ramsey Decl.”), attached hereto as Exhibit 10 (“Ex. 10”) at ¶ 7; see generally 04/06/2009 Declaration of R. Wayne Klein, Receiver (“04/06/2009 Klein Decl.”), attached hereto as Exhibit 15 (“Ex. 15”).

5. Palmer has never been registered with the Commission in any capacity and has never been licensed to sell securities. See Ex. 2 at pp. 51-52; Ex. 3 at ¶ 3; Declaration of Tim Martin (“Martin Decl.”), attached hereto as Exhibit 13 (“Ex. 13”).



### C. PALMER'S MISREPRESENTATIONS

6. Palmer marketed himself and Trigon by representing that he knew a complex trading strategy through which he invested in indexes, S&P 500 options or futures, currency futures, and stocks in a way that generated consistent annual returns of 20 percent or greater. See Ex. 2 at pp. 22-24; Ex. 7 at ¶ 4; Ex. 8 at ¶ 4; Ex. 9 at ¶ 4; Ex. 10 at ¶ 4.

7. Palmer touted his reputation in the Idaho Falls community as an honest family man with a long record of producing high returns for investors. Ex. 4 at ¶ 2; Ex. 5 at ¶ 2; Ex. 7 at ¶ 3; Ex. 8 at ¶ 3; Ex. 9 at ¶ 2; Ex. 10 at ¶ 3. Palmer told some investors that he had been generating annual returns of 20 percent or greater for more than 12 years. Ex. 2 at p. 33; Ex. 4 at ¶ 3; Ex. 5 at ¶ 4; Ex. 6 at ¶ 7; Ex. 7 at ¶ 5; Ex. 8 at ¶ 6; Ex. 9 at ¶ 4.

8. Palmer described his trading program as difficult to understand, but one that operated essentially like a hedge fund. Ex. 2 at p. 24; Ex. 7 at ¶ 4; Ex. 8 at ¶ 4; Ex. 9 at ¶ 4; Ex. 10 at ¶ 4. He explained that the investor's principal would be combined with those of other investors and traded as a single fund. Ex. 6 at ¶ 5; Ex. 7 at ¶ 4; Ex. 8 at ¶ 5.

9. Palmer told investors that he was licensed to sell securities when in fact he was never registered or licensed to do so. Ex. 2 at pp. 51-52; Ex. 5 at ¶ 5.

10. Palmer guaranteed high returns using his strategy, regardless of market conditions, with no risk to investors' principal investments. Ex. 2 at p. 48; Ex. 4 at ¶ 3; Ex. 5 at ¶ 4; Ex. 6 at ¶ 5; Ex. 7 at ¶ 5; Ex. 8 at ¶ 4; Ex. 10 at ¶ 4.

11. Palmer failed to caution investors of the risk associated with futures trading. Ex. 2 at p. 48.

12. Palmer evidenced most of the investment monies he received with a Promissory Note ("Note") that he signed either as an individual or as the President of Trigon. Ex. 2 at p. 32; Promissory Notes, attached hereto as Exhibit 12 ("Ex. 12").

13. Although not identical, the Notes generally stated that Palmer owed the investor his/her principal plus interest of 20 to 25 percent annually. Ex. 12. However, in some instances, Palmer's Note stated that the investor would be paid with interest "at the rate per performance from Trigon." Id.

14. All Notes Palmer issued stated: "No collateral will be provided." Id.

15. If Palmer did not issue a Note, he entered into a verbal investment contract which promised payment of 20 percent returns or greater per year. Ex. 3 at ¶ 3; Ex. 7 at ¶ 6.

16. Palmer told investors that he would retain a portion of the generated profits, but actually paid himself a set amount of up to \$25-35,000 per month. Ex. 2 at p. 99; Ex. 5 at ¶ 4; Ex. 12.

17. Of the money given to Palmer by investors, approximately \$6.8 million was deposited into trading accounts, representing only 10.07% of the total amount Palmer received from investors. See Initial Report by Wayne Klein, Receiver (Docket # 15) at ¶ 17.

18. Only a small portion of the money invested was ever used to trade commodities. Palmer often placed money was in accounts and, then, withdrew it with no trading ever taking place. Id.

19. While some of the accounts did earn money, commissions and fees paid to those who assisted Palmer in trading coupled with the costs of trading services exceeded any profits actually earned from trading. Id. at ¶¶ 18, 19.



20. Of the investor money deposited in Trigon's accounts, Palmer spent more than \$6 million on his personal home expenses and construction costs. Ex. 15 at ¶ 13.

21. Palmer also spent over \$6 million paying himself a salary and paying for credit cards. Other personal expenses included over \$245,000 on personal assets including art and jewelry, as well as over \$118,000 on vehicle purchases including cars, trailers, and snowmobiles. \$23,000 was also given away as community donations. Id. at ¶¶ 13, 14.

22. Although Palmer led investors to believe that all money given to Palmer would be invested through Trigon, Palmer used over \$360,000 of investor money to charter private planes and more that \$270,000 for business expenses. Id. at ¶ 13.

23. Palmer also gave large amounts of investor money to close family members, including more than \$387,000 to his father; approximately \$50,000 to his brother; and over \$2.7 million to his wife's relatives. Id. at ¶ 14.

24. Investor money was also distributed to various business entities controlled by Palmer or his family members, including over \$1.4 million in property purchases, nearly \$4 million in construction costs, and over \$1.3 million to a construction company owned by Palmer's father. Id.

#### **D. THE COLLAPSE OF PALMER'S SCHEME**

25. Despite attempts to maintain an image of success and attract additional investors, on December 15, 2008, Palmer told a group of concerned Idaho Falls investors that, through his trading program, he had lost virtually all of the invested funds. Ex. 4 at ¶ 9; Ex. 5 at ¶ 11-12, 14; Ex. 8 at ¶ 12; Ex.9 at ¶ 9; Ex. 10 at ¶ 8.

26. In or around January 2009, Palmer admitted to investors that he had extinguished all funds and had been running a Ponzi scheme for many years. Ex. 2 at pp. 47, 66; Ex. 5 at ¶¶ 11-13; Ex. 8 at ¶¶ 9, 13.
27. Although Palmer provided investors with statements showing trading profits, the payments made were actually from the principal investments of later investors. Ex. 2 at pp. 35, 66; Ex. 6 at ¶ 9; Ex. 10 at ¶ 8.
28. Later investors were not informed that Palmer would use their principals to pay returns to earlier investors. Ex. 2 at pp. 48-49.
29. Palmer also admitted to using investor funds to pay his salary, personal credit cards, home construction costs and to purchase snowmobiles. Ex. 2 at pp. 47-48, 64-66, 68-101; Check Register, attached hereto as Exhibit 11 ("Ex. 11").
30. Palmer gave the last \$500,000 of investor funds to several individuals who purported to be lenders and/or investors from Dubai. The Dubai-based lenders and/or investors scammed Palmer in what appears to be an advance fee scam. Ex. 2 at pp. 90-92.
31. Although Palmer collected at least \$60 million in investor funds, he placed only a fraction of those funds into trading accounts, and used the rest to pay personal expenses and phony returns to earlier investors. Ex. 15 at ¶ 13; Ex. 2 at pp. 46-48.
32. Participants in the investment program invested over \$68 million with Palmer, more than \$46 million of which was used to pay phony returns. Ex. 15 at ¶¶ 12, 13.
33. Palmer admitted to owing investors \$35-45 million, but claims the investor funds are completely lost. Ex. 2 at 92, 100; Ex. 5 at ¶ 12; Ex. 8 at ¶ 13; Ex. 9 at ¶ 9; Ex. 10 at ¶ 12.

#### **E. PALMER'S DEPOSITION**

34. The Commission deposed Palmer on April 15, 2009 in accordance with the Federal Rules of Civil Procedure, during which he asserted his Fifth Amendment privilege against self-incrimination to all questions of material significance. See generally Ex. 14.

#### **IV. THE COMMISSION IS ENTITLED TO JUDGMENT AS A MATTER OF LAW**

##### **A. THIS COURT SHOULD DRAW AN ADVERSE INFERENCE FROM PALMER'S INVOCATION OF THE FIFTH AMENDMENT**

The Commission deposed Palmer on April 15, 2009 during which Palmer asserted the Fifth Amendment privilege to all of the Commission's substantive allegations. This Court should draw an adverse inference from Palmer's invocation of the Fifth Amendment privilege against self-incrimination. The Supreme Court has held that, "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." Baxter v. Palmigiano, 425 U.S. 308, 318 (1976). "[A]s Justice Brandeis declared, speaking for a unanimous court in the Tod case, 'silence is often evidence of the most persuasive character.'" Id. at 319 (quoting United States ex rel. Bilokumsky v. Tod, 263 U.S. 149, 153-54 (1923)). "Failure to contest an assertion . . . is considered evidence of acquiescence . . . if it would have been natural under the circumstances to object to the assertion in question." Id. (quoting United States v. Hale, 422 U.S. 171, 176 (1975)).

In this case, the Commission is entitled to an adverse inference against Palmer, because the undisputed evidence demonstrates that Palmer defrauded investors through the operation of a classic Ponzi scheme, and because he refused to answer any substantive questions during his

deposition. Palmer's repeated invocation of the Fifth Amendment privilege should be viewed as a failure to deny the allegations. In light of Palmer's invocation of the privilege against self-incrimination to all inquiries of material significance, this Court should draw an adverse inference against Palmer.

## **B. PALMER VIOLATED THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS**

The undisputed facts demonstrate that Palmer violated the antifraud provisions of the federal securities laws. See 15 U.S.C. §§ 77q(a) and 78j(b). To prove a violation of Section 17(a) and 10(b), the Commission must demonstrate that Palmer made a material misstatement or omission in connection with the offer or sale of a security by means of interstate commerce. SEC v. TLC Invs. & Trade Co., 179 F. Supp. 2d 1149, 1153 (C.D. Cal. 2001) (quoting SEC v. GLT Dain Rauscher, Inc., 254 F.3d 852, 856 (9th Cir. 2001)); see also SEC v. Aqua Vie Beverage Corp., 2007 U.S. Dist. LEXIS 50645, at \*10 (D. Idaho July 9, 2007). Sections 17(a)(1) and 10(b) require a showing of scienter. Aaron v. SEC, 446 U.S. 680, 701-02 (1980); Vernazza v. SEC, 327 F.3d 851, 859 (9th Cir. 2003). The undisputed facts establish that the Commission is entitled to summary judgment against Palmer

### **1. Palmer Made Material Misrepresentations and Omissions**

The undisputed facts establish the Palmer made numerous material misrepresentations and omissions to Trigon investors. A fact is material if there is a substantial likelihood that a reasonable investor would consider that information important in making an investment decision. TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976). Palmer told investors that he would place their funds in a risk-free trading program in which he could generate returns in excess of 20 percent. Instead, Palmer used funds that he purported to invest to pay bogus returns to other investors as well as to pay himself a salary and support his extravagant lifestyle. Facts at



¶¶ 16, 18. That information would have been material for investors when deciding whether to invest with Palmer and Trigon. Palmer's misrepresentations regarding the true value of Trigon are material. See TLC Invs. & Trade Co., 179 F. Supp. 2d at 1153; SEC v. Cochran, 214 F.3d 1261, 1268 (10th Cir. 2000) ("information implicating the fair market value would be material to a reasonable investor"); Everest Sec., Inc. v. SEC, 116 F.3d 1235, 1239 (8th Cir. 1997) ("It would be material to an investor to know that the offering company's existing project had been abandoned, that none of its asset value was to be recouped.").

Similarly, investors would consider it important to know that Palmer was misappropriating their funds and that Trigon operated as a Ponzi scheme. TLC Invs. & Trade Co., 179 F. Supp. 2d at 1153; see also SEC v. Smith, 2005 U.S. Dist. LEXIS 21427, at \*14-15 (S.D. Ohio Sept. 27, 2005) ("it is obvious that a reasonable investor would consider it important to know that his money would not be invested in bank stock but would instead be used for other purposes, such as to pay for [Palmer's credit card] bill, car washes, dating services, and the expenses of [Palmer's] other companies"). A reasonable investor would find information about Palmer's actual use of investor funds important in making an investment decision. Consequently, Palmer's misrepresentations and omissions were material.

## **2. Palmer Acted with Scienter**

Palmer made these misrepresentations to investors with scienter. Scienter is a "mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). Scienter may be established by reckless conduct. Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990).

'Reckless conduct may be defined as a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or

sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.’ Id. at 1569 (quoting Sundstrand Corp. v. Sun Chem. Corp., 553 F.2d 1033, 1045 (7th Cir. 1977)).

Palmer clearly acted with scienter. Palmer admits that he told investors their money would be used to trade securities when he actually used newly invested funds to pay returns to other investors. See Ex. 2 at pp. 47. Palmer further admits to using investor funds to pay for personal expenses including construction of his expensive home, personal credit cards and snowmobiles. Id. at 47–48, 71. Palmer told investors his program was risk-free despite knowing he actually invested only a small percentage of the funds he raised. Palmer used the bulk of the investor money to either pay bogus returns to earlier investors or to pay his personal expenses. Id. at 48. Finally, while Palmer told investors he was licensed to sell securities, he knew that he had never been registered to sell securities. Id. at 51, 52; Ex. 5 at ¶ 5. These undisputed facts demonstrate that Palmer acted with the requisite scienter.

### **3. Palmer Used Interstate Commerce**

Palmer used the means and instrumentalities of interstate commerce to operate his Ponzi scheme. The jurisdictional means requirement of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder are satisfied by the use of the mails or telephone in connection with the fraud. See 15 U.S.C. §§ 77q(a) and 78j(b). The fraud or misrepresentation itself need not have been communicated over the telephone or through the mails, so long as the defendant’s use of the telephone or mails “furthered the fraudulent scheme.” Aquionics Acceptance Corp. v. Kollar, 503 F.2d 1225, 1228 (6th Cir. 1974); United States v. Ashdown, 509 F.2d 793, 796 (5th Cir. 1975).



Here the jurisdictional means are met. Palmer offered and sold securities to residents of at least three states. Palmer used the mails or instrumentalities of interstate commerce to induce investors to purchase securities from at least 1996 until October 2008.

**C. THE UNDISPUTED FACTS DEMONSTRATE THAT PALMER VIOLATED THE REGISTRATION REQUIREMENTS**

The undisputed facts establish that Palmer violated Sections 5(a) and 5(c) of the Securities Act. Sections 5(a) and 5(c) prohibit the unregistered offer or sale of securities in interstate commerce, unless an exemption from registration applies. SEC v. Murphy, 626 F.2d 633, 640-41 (9th Cir. 1980). Section 5 imposes liability on any person who “directly or indirectly” engages in unregistered offers or sales of securities, including those who organize or supervise the selling effort. SEC v. Interlink Data Network of Los Angeles, Inc., 1993 U.S. Dist. LEXIS 20163, at \*41 (C.D. Cal. Nov. 15, 1993). Scienter is not an element of a Section 5 violation. Aaron, 446 U.S. at 714 n.5. Section 5 imposes strict liability on anyone who violates its terms. SEC v. Friendly Power Co. LLC, 49 F. Supp. 2d 1363, 1368 (S.D. Fla. May 12, 1999); SEC v. Alliance Leasing Corp., 2000 U.S. Dist. LEXIS 5227, at \*21 (S.D. Cal. Mar. 20, 2000) (concluding that a Section 5 violation does not require evidence of a specific intent to violate the statute). In State v. Montgomery, the Idaho Supreme Court stated their intent to “join the majority of courts that have found scienter is not required for violations of the securities registration...requirements.” 135 Idaho 348, 351 (2001).

Once the Commission establishes the prima facie elements of a Section 5 violation, the defendant bears the burden of proving that an exemption from registration applies. SEC v. Ralston Purina Co., 346 U.S. 119, 126 (1953); Murphy, 626 F.2d at 641. The Notes and investment contracts sold by Trigon and Palmer are securities for which no registration statement has been filed. See Facts at ¶ 2. Palmer used the means and instruments of interstate commerce

to sell unregistered Trigon securities. As a result, the undisputed facts demonstrate that Palmer violated Section 5(a) and (c) of the Securities Act.

#### **D. PALMER ACTED AS AN UNREGISTERED BROKER-DEALER**

The undisputed facts establish that Palmer violated Section 15(a) of the Exchange Act. Section 15(a) of the Exchange Act prohibits a broker-dealer from using interstate commerce to effect or attempt to induce transactions in securities unless the broker-dealer is registered with the Commission in accordance with Section 15(b). Palmer violated Section 15(a) by soliciting investors in Trigon without being affiliated with a registered broker and without being registered as a broker pursuant to Section 15(b). See Ex. 2 at pp. 52.

#### **V. THE COMMISSION IS ENTITLED TO THE RELIEF IT SEEKS**

##### **A. THIS COURT SHOULD ENJOIN PALMER FROM FUTURE VIOLATIONS OF THE FEDERAL SECURITIES LAWS**

Section 20(b) of the Securities Act and Section 21(d)(1) of the Exchange Act grant the Commission the authority to seek injunctive relief when it appears, upon a proper showing, “that any person is engaged or is about to engage in acts or practices constituting a violation of any provision [of the Acts].” 15 U.S.C. §§ 77t(b) and 78u(d)(1). To obtain such relief, the Commission must demonstrate Palmer violated the federal securities laws and there is a reasonable likelihood that the violation will be repeated. See, e.g., SEC v. United Fin. Group, Inc., 474 F.2d 354, 359 (9th Cir. 1973); Murphy, 626 F.2d at 655.

In determining whether a reasonable likelihood of future violations exists, courts must assess the totality of the circumstances surrounding a defendant’s violations. See Murphy, 626 F.2d at 655. Those circumstances include:

- (1) the degree of scienter involved; (2) the isolated or recurrent nature of the violation; (3) the defendant’s recognition of the wrongful nature of his conduct; (4) the likelihood, because of

defendant's professional occupation, that future violations might occur; (5) and the sincerity of his assurances against future violations.

Id. (citations omitted).

As set forth above, the undisputed facts establish that Palmer violated the federal securities laws. Here, the violations are egregious: Palmer knowingly operated a Ponzi scheme for over twelve years. See Facts at ¶ 4. Palmer made numerous material misrepresentations to investors, promising them unusually high returns and defrauding them of over \$60 million. Id. In his testimony, Palmer denied any wrongdoing, despite admitting that he failed to invest money raised from investors. See Ex. 2. Trigon funds were Palmer's sole source of income, and trading has been Palmer's primary source of income since graduating college, creating a likelihood of future violations. Id. at 8-21. Based on the foregoing, this Court should grant the Commission's request for injunctive relief and enjoin Palmer from future violations of Sections 17(a) and 5(a) and (c) of the Securities Act and from future violations of Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

**B. PALMER SHOULD DISGORGE HIS ILL-GOTTEN GAINS AND PAY PREJUDGMENT INTEREST THEREON**

This Court has broad equity power to order Palmer to disgorge ill-gotten gains obtained through violations of the federal securities laws. SEC v. First Pac. Bancorp., 142 F.3d 1186, 1191 (9th Cir. 1998). "To order disgorgement, the district court . . . need find only that [Palmer] has no right to retain the funds illegally taken from the victims." SEC v. Colello, 139 F.3d 674, 679 (9th Cir. 1998). Disgorgement is designed to deprive a wrongdoer of the fruits of the fraud and to deter others from engaging in violations of the federal securities laws by making violations unprofitable. First Pac. Bancorp., 142 F.3d at 1191. A disgorgement calculation requires a "reasonable approximation of profits causally connected to the violation." Id. at 1192

n.6 (citation omitted). The amount of disgorgement should include “all gains flowing from the illegal activities.” SEC v. Cross Fin. Servs., Inc., 908 F. Supp. 718, 734 (C.D. Cal. 1995).

Moreover, the amount of disgorgement should not include any offset for the operating expenses of Trigon. SEC v. JT Wallenbrock & Assocs., 2006 U.S. App. LEXIS 5949, at \*11 (9th Cir. Mar. 10, 2006) (holding “it would be unjust to permit the defendants to offset against the investor dollars they received the expenses of running the very business they created to defraud those investors into giving the defendants the money in the first place”). “Neither the deterrent purpose of disgorgement nor the goal of depriving a wrongdoer of unjust enrichment would be served were we to allow these defendants – who defrauded investors . . . to ‘escape disgorgement by asserting that expenses associated with this fraud were legitimate.’” Id. at \*15 (quoting SEC v. Kenton Capital, Ltd., 69 F. Supp. 2d 1, 16 (D.D.C. 1998)).

Palmer used the money from Trigon investors to pay bogus returns to other investors as well as for personal expenses. Ex. 2 at pp. 47-48, 64-66. In total, Palmer raised over \$68 million from investors. Facts at ¶ 34. Palmer returned approximately \$46 million to investors in Ponzi payments. Id. Palmer used \$17,408,937.55 of the remaining funds to pay himself a salary, to build an expensive home, to provide money to relatives and to pay his personal expenses. Consequently, this Court should order Palmer to disgorge \$17,408,937.55, representing the total money Palmer misappropriated for personal gain. Ex. 15 at ¶ 14.

The Court should also award prejudgment interest against Palmer. “The ill-gotten gains include prejudgment interest to ensure that the wrongdoer does not profit from the illegal activity.” Cross Fin. Servs., Inc., 908 F. Supp. at 734 (C.D. Cal. 1995) (citing SEC v. Lund, 570 F. Supp. 1397, 1404 (C.D. Cal. 1983)). Payments going to the Palmers and their immediate family members from Trigon accounts total more than \$17 million. Ex. 15 at ¶ 14. Additionally,



in order to ensure that Palmer does not profit from his illegal activity, the Court should award prejudgment interest in the amount of \$17,411,011.02. See Declaration of Matthew Himes, attached hereto as Exhibit 19, ("Ex. 19") at ¶ 3 and Exhibit "A" thereto.

**VI. THE COURT SHOULD IMPOSE A CIVIL PENALTY AGAINST PALMER**

The Court should order a third-tier civil penalty against Palmer. Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act provide that a Court may impose a civil penalty against Palmer of up to \$130,000 or the gross amount of the pecuniary gain if the violations "involved fraud or deceit" or if the violation "directly or indirectly created a significant risk of substantial losses to other persons." 15 U.S.C. §§ 77t(d) and 78u(d)(3). Here, a third-tier penalty is appropriate. Palmer's conduct clearly involved fraud and deceit. In addition, his conduct resulted in the loss of millions of dollars for investors who invested in Trigon.

**VII. CONCLUSION**

Based on the foregoing, the Commission respectfully requests this Court to grant its Motion for Summary Judgment against Palmer ordering him to disgorge his ill-gotten gains of \$17,408,937.55 together with prejudgment interest thereon in the amount of \$17,411,011.02 for a total of \$34,819,948.57 and to pay a third-tier civil monetary penalty.

DATED this 26<sup>th</sup> day of August 2009.

/s/ Karen L. Martinez

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Karen L. Martinez  
Thomas M. Melton  
Attorneys for Plaintiff  
Securities and Exchange Commission

**F. and Replies**

1:09-cv-00075-EJL U.S. Securities and Exchange Commission v. Palmer et al  
NDPREB

**U.S. District Court**

**District of Idaho (LIVE Database) Version 3.2.2**

**Notice of Electronic Filing and Service**

The following transaction was entered by Martinez, Karen on 8/27/2009 at 11:38 AM MDT and filed on 8/27/2009

**Case Name:** U.S. Securities and Exchange Commission v. Palmer et al  
**Case Number:** 1:09-cv-75  
**Filer:** U.S. Securities and Exchange Commission  
**Document Number:** 35

**Docket Text:**

**MEMORANDUM in Support re [34] MOTION for Summary Judgment *against Daren L. Palmer* filed by U.S. Securities and Exchange Commission. (Attachments: # (1) Exhibit Exhibit 1: Articles of Incorporation of Trigon Group, Inc., # (2) Exhibit Exhibit 2, Part 1: Investigative Testimony of Daren L. Palmer, # (3) Exhibit Exhibit 2, Part2: Investigative Testimony of Daren L. Palmer, # (4) Exhibit Exhibit 2, Part 3: Investigative Testimony of Daren L. Palmer, # (5) Exhibit Exhibit 3: Declaration of Norman J. Korb, # (6) Exhibit Exhibit 4: Declaration of Jay Lane Butler, # (7) Exhibit Exhibit 5: Declaration of Kevin Taggart, # (8) Exhibit Exhibit 6: Declaration of David K. Swenson, # (9) Exhibit Exhibit 7: Declaration of Darryl Harris, # (10) Exhibit Exhibit 8: Declaration of David Taylor, # (11) Exhibit Exhibit 9: Declaration of Jack B. Larsen, # (12) Exhibit Exhibit 10: Declaration of Paul Ramsey, # (13) Exhibit Exhibit 11, Part 1: Check Register, # (14) Exhibit Exhibit 11, Part 2: Check Register, # (15) Exhibit Exhibit 12: Promissory Notes, # (16) Exhibit Exhibit 13: Declaration of Tim Martin, # (17) Exhibit Exhibit 14: Deposition of Daren L. Palmer, # (18) Exhibit Exhibit 15: Declaration of R. Wayne Klein, Receiver, # (19) Exhibit Exhibit 16: Declaration of Stephen Crandall, # (20) Exhibit Exhibit 17: Declaration of Reed Raymond, # (21) Exhibit Exhibit 18: Declaration of Bruce Jones, # (22) Exhibit Exhibit 19: Declaration of Matthew Himes)(Martinez, Karen)**

**1:09-cv-75 Notice has been electronically mailed to:**

U.S. Securities and Exchange Commission martinezk@sec.gov

John F Kurtz jkurtz@hawleytroxell.com, tfrench@hawleytroxell.com

Karen L Martinez martinezk@sec.gov, himesm@sec.gov



Mitchell R Barker mitchbarker1492@hotmail.com

**1:09-cv-75 Notice will be served by other means to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Exhibit Exhibit 1: Articles of Incorporation of Trigon Group, Inc.

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**Document description:**Exhibit Exhibit 2, Part 1: Investigative Testimony of Daren L. Palmer

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**Document description:**Exhibit Exhibit 2, Part2: Investigative Testimony of Daren L. Palmer

**Original filename:**n/a

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**Document description:**Exhibit Exhibit 3: Declaration of Norman J. Korb

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**Document description:**Exhibit Exhibit 4: Declaration of Jay Lane Butler

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**Document description:**Exhibit Exhibit 9: Declaration of Jack B. Larsen

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**Document description:**Exhibit Exhibit 14: Deposition of Daren L. Palmer

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