VitalLaw Legislation and Rules News, FRAUD AND MANIPULATION—9th Cir.: Investor pecuniary harm not required for disgorgement, (Sep 4, 2025)

By Jay Fishman, J.D.

Disgorgement retrieves defendants' ill-gotten gains regardless of whether the investors suffered a financial loss.

The United States Court of Appeals for the Ninth Circuit affirmed the California District Court's decision awarding the SEC disgorgement of the individual defendant's ill-gotten gains from securities fraud. The appeals court adopted the First Circuit's holding that disgorgement was proper even without investors suffering pecuniary harm (*SEC v. Sripetch*, No. 24-3830 (9th Cir. Sept. 3, 2025)).

Defendants' illegal profits from securities fraud schemes. The SEC, in a civil enforcement action under 15 U.S.C. §78u(d)(5) and (d)(7), charged the defendant with six counts of securities fraud under the 1933 Securities Act and 1934 Securities Exchange Act, along with one count of selling unregistered securities under the 1933 Act. The Commission alleged that in 2020 the defendant and his accomplices engaged in numerous fraudulent schemes involving at least 20 penny stock companies and profited at least $6 million in illegal sales proceeds from the wrongful conduct while simultaneously harming retail investors who purchased shares during the schemes. The district court awarded the Commission disgorgement of $2,251,923.16 without deciding whether a finding of pecuniary harm to the investors was mandated, concluding that the SEC made the required showing.

Defendant's appeal. The defendant argued on appeal that the district court abused its discretion by awarding disgorgement without showing pecuniary harm to the investors as required by §78u(d)(5) and (d)(7). The SEC countered, proclaiming a "pecuniary harm finding" is not required.

Court contrasts First and Second Circuit analysis. The court adopted the *First Circuit's* holding that investor pecuniary harm is not a prerequisite for awarding disgorgement. But the court disagreed with the *Second Circuit's* holding that a showing of financial loss to the investors from the defendant's scheme was indeed necessary in order to award disgorgement.

First Circuit. The First Circuit relied on the U.S. Supreme Court's 2020 *Liu v. Securities and Exchange Commission* case holding that courts can award disgorgement as equitable relief under 15 U.S.C. §78u(d)(5) but the award amount is limited to the wrongdoer's net profits and must be awarded for victims and where, under common law, the claimant's "legally protected interests" have been interfered with. The Ninth Circuit in this [Sripetch] case remarked that nowhere in the *Liu* case did the Supreme Court mandate a showing of pecuniary harm to award disgorgement, and that the First Circuit granted disgorgement relying on *Liu*.

Second Circuit. The Ninth Circuit spent the bulk of this opinion discussing where the Second Circuit erred in requiring pecuniary harm for disgorgement. The court agreed with the Second Circuit's reliance on *Liu* in the Second Circuit's landmark decision on this issue— *SEC v. Govil* (2023) —that disgorgement under Section (d)(5) must be awarded for victims and also that disgorgement under common law requires a claimant whose "legally protected interests" have been interfered with. The Ninth Circuit, however, disagreed with the Second Circuit's conclusion that "victim" is narrowly defined as an individual or entity that has suffered pecuniary harm. The Ninth Circuit referred to the Supreme Court's *Liu* case references to common law as proof that common law principles and "traditional equity practice" govern disgorgement. Therefore, stated the Ninth Circuit, the Second Circuit's conclusion narrowly defining a "victim" as an individual or entity that suffered pecuniary harm directly contradicts the common law principle that a claimant seeking disgorgement need only show "an actionable interference by the defendant with the claimant's legal protected interests"; the claimant, however, "need not show any loss whatsoever, let alone a pecuniary loss." The court remarked that mandating a financial loss for disgorgement claims, as the Second Circuit requires, would

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effectively ensure that wrongdoers could profit from their unlawful acts as long as the wronged party suffers no financial loss.

Court distinguishes civil enforcement action from private securities action. The Ninth Circuit then made a point of distinguishing an SEC civil enforcement action like this one from a private securities action. A private securities action's purpose is to award the defrauded investor-victims compensatory and perhaps punitive damages for their financial losses from the defendant's wrongdoing, and so pecuniary harm is a necessary element for attaining those damages. On the other hand, a civil enforcement action's purpose is simply to prevent the wrongdoer from profiting from his wrongdoing; hence, financial loss suffered by the investors is not a prerequisite for disgorgement.

Court notes no different disgorgement result with Section (d)(5) vs. (d)(7). The court lastly noted that neither the SEC nor the defendant argued that the disgorgement remedy under 15 U.S.C. Section (d)(7) is narrower than (d)(5)'s remedy; therefore, the court declared, pecuniary harm is not required under either section.

The case is No. 24-3830.

Judge: Thomas, H.

Attorneys: Christopher John Dunnigan for the SEC. Tyler Robert Creekmore (Brown, White & Osborn, LLP) for Ongkaruck Sripetch.

Companies: Adtron Inc. a/k/a Stockpalooza.com; ATG Inc.; DoIT, Ltd.; Doji Capital, Inc.; King Mutual Solutions Inc.; Optimus Prime Financial Inc.; Orca Bridge; Redline International; UAIM Corp.

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