UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	**Case No. 17-cv-1261**
RONALD VAN DEN HEUVEL, and GREEN BOX NA DETROIT, LLC,	:	**Hon. William C. Griesbach**
Defendants.	:	

SECURITIES AND EXCHANGE COMMISSION'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT GREEN BOX NA DETROIT, LLC

The Securities and Exchange Commission respectfully moves for a default judgment against defendant Green Box NA Detroit, LLC ("Green Box Detroit"). *See* Fed. R. Civ. P. 55(b). Simply put, Green Box Detroit – Ronald Van Den Heuvel's company – has not responded to the Complaint, despite more-than-ample opportunities in the past 23 months. The deadline to respond to the Complaint has come and gone, and Green Box Detroit has not responded.

This Court should enter final judgment against Green Box Detroit, and order the disgorgement of ill-gotten gains, prejudgment interest, and a civil penalty. This Court also should issue a permanent injunction, and thus protect the investing public from future violations of the federal securities laws.

Background

Green Box Detroit was – and likely still is – Van Den Heuvel's company. Van Den Heuvel was the Chairman and CEO of Green Box Detroit during the relevant time, and he owned and controlled the company, too. *See* Cplt. ¶ 13. Green Box Detroit is nominally headquartered in De Pere, Wisconsin. *Id.*

By all appearances, Green Box Detroit is defunct and is no longer operating. The company has not been in good standing with the State of Michigan since 2017. *See* Ex. 1. But when Van Den Heuvel was soliciting investments, Green Box Detroit held itself out as an up-and-coming company with world-changing, Earth-saving technology. But appearances were deceiving, and so was the CEO. In reality, Green Box Detroit was at the crux of a fraud.

Green Box Detroit played a prominent role in the fraud of the EB-5 investors from China. *Id.* at ¶¶ 11, 17; *see generally id.* at ¶¶ 66 – 94. Speaking on behalf of the company, Van Den Heuvel represented that Green Box Detroit would use the funds from investors to own and operate an eco-friendly recycling facility in Michigan. *Id.* at ¶¶ 1 – 2, 66, 75, 88 – 90. He claimed that Green Box Detroit would take food-contaminated waste and convert it into usable products, such as recycled paper. *Id.*

On behalf of Green Box Detroit, Van Den Heuvel also made other representations to entice investors. *See id.* at ¶¶ 95 – 126. He represented that Green Box Detroit had the right to use a key strength-enhancing fiber additive from Cargill. *Id.* at ¶¶ 97 – 106. He claimed that Green Box Detroit had secured financing from tax-exempt bonds totaling $95 million to $125 million. *Id.* at ¶¶ 107 – 118. He touted Green Box Detroit's intellectual property, claiming that it had the right to seven patents. *Id.* at ¶¶ 119 – 123. He also told two different groups of investors that he had used their funds to buy specific pieces of equipment. *Id.* at ¶¶ 124 – 126.

It was all a lie. Van Den Heuvel and Green Box Detroit used only some of the money for its intended purpose, and they misappropriated the rest. *Id.* at ¶¶ 93 – 94. Green Box Detroit did not have the right to use Cargill's product, and it did not have tax-exempt funding, either. *Id.* at ¶¶ 101 – 106, 112 – 118. Green Box did not have seven patents – most were expired, or belonged to someone else, or were only applications. *Id.* at ¶ 123. And in reality, only some of the funds for the equipment came from each set of investors. *Id.* at ¶¶ 125 – 126.

Van Den Heuvel was successful at his fraud, and the money ultimately flowed to Green Box Detroit. Van Den Heuvel and Green Box Detroit raised approximately $4,475,000 from nine EB-5 investors from China. *Id.* at ¶ 85. The investors sent their money to an EB-5 regional center that, in turn, sent the funds to Green Box Detroit. *Id.* at ¶ 86. In exchange, Green Box Detroit signed promissory notes and agreed to repay the investors, with interest. *Id.* at ¶ 87.

Green Box Detroit pooled the funds from the EB-5 investors in the same account. *Id.* at ¶ 86. Some of the EB-5 funds were later commingled with funds from other investors (that is, investors who were not EB-5 investors). Specifically, Green Box Detroit sent $845,000 of the $4,475,000 to another account, and commingled those funds with funds from other investors. *Id.* at ¶¶ 61, 93. The rest of the EB-5 funds ($3,630,000 of the $4,475,000) were not commingled.

Van Den Heuvel's fraud caught up with him. In September, 2017, the SEC filed the Complaint against Van Den Heuvel and Green Box Detroit, alleging violations of the federal securities laws. A process server served Green Box Detroit with a copy of the summons and the Complaint through its registered agent on September 25, 2017. The SEC promptly filed a return of service on September 29, 2017. *See* Dckt. No. 4.

Under Federal Rule 12(a)(1)(A)(i), Green Box Detroit had an obligation to file an answer within 21 days of service. That is, Green Box Detroit needed to file its answer by October 16,

2017. The company missed the deadline. So, in October, 2017, the SEC promptly filed a motion for the clerk's entry of default against Green Box Detroit under Rule 55(a). *See* Dckt. No. 5. The clerk's office entered the default the following day. *See* Clerk's Entry of Default as to Green Box NA Detroit LLC (entered Oct. 31, 2017).

Meanwhile, the United States filed an indictment charging Van Den Heuvel with 14 counts of wire fraud and money laundering. *See United States v. Van Den Heuvel*, 17-cr-160 (E.D. Wis. Sept. 19, 2017). The facts alleged in the indictment substantially overlapped with the facts alleged in the SEC's Complaint. The United States then filed a motion to stay discovery in this case, pending resolution of the related criminal action. *See SEC v. Van Den Heuvel*, 17-cv-1261 (E.D. Wis.) (Dckt. No. 8). This Court promptly issued a stay, which lasted until 2019. *See* Dckt. Nos. 10, 18.

Van Den Heuvel ultimately pleaded guilty to one count of wire fraud, and received a sentence of 90 months. *See United States v. Van Den Heuvel*, 17-cr-160 (E.D. Wis.) (Dckt. Nos. 108, 127). In light of his criminal sentence, the SEC and Van Den Heuvel agreed to a resolution of the claims against him. The parties filed a motion for judgment against Van Den Heuvel, and this Court entered final judgment against him on July 19, 2019. *See SEC v. Van Den Heuvel*, 17-cv-1261 (E.D. Wis.) (Dckt. No. 20).

Through it all, Green Box Detroit has never mustered an appearance, or filed any responsive pleading. Green Box Detroit has not participated in this lawsuit, and the time has now come to enter final judgment against the company.

To that end, the SEC is respectfully submitting a proposed draft of a final judgment against Green Box Detroit. *See* Ex. 2. The entry of final judgment against Green Box Detroit will bring this litigation to a close.

ARGUMENT

In light of the entry of default, the only remaining issue is the scope of the remedy. "Upon default, the well-pled allegations of the complaint relating to liability are taken as true, but those relating to the amount of damages suffered ordinarily are not." *Wehrs v. Wells*, 688 F.3d 886, 892 (7th Cir. 2012); *see also In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004); *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983); 10A Charles Alan Wright *et al.,* Federal Practice and Procedure § 2688, at 58-59 (3d ed. 1998 & Supp. 2012); Fed. R. Civ. P. 55(b)(2).

District courts enjoy "broad equitable power to fashion appropriate remedies" for violations of the federal securities laws. *See SEC v. Whittemore*, 659 F.3d 1, 9 (D.C. Cir. 2011); *see also SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972); 15 U.S.C. § 77v(a); 15 U.S.C. § 78aa. The full panoply of equitable remedies is available to the Court, including a wide range of non-injunctive relief. *See SEC v. Materia*, 745 F.2d 197, 200 (2d Cir. 1984).

In its Complaint, the SEC sought the disgorgement of ill-gotten gains, prejudgment interest, and a civil penalty against Green Box Detroit, as well as an injunction. *See* Dckt. No. 1, at 16-17. All forms of relief are appropriate in this case.

I. This Court Should Enter Final Judgment Against Green Box Detroit.

A. This Court Should Order the Disgorgement of Ill-Gotten Gains.

For starters, this Court should order Green Box Detroit to disgorge its ill-gotten gains. "Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable." *SEC v. Platforms Wireless Intern. Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010); *SEC v. Black*, 2009 WL 1181480, at *2

(N.D. Ill. 2009); *SEC v. Michel*, 521 F. Supp. 2d 795, 831 (N.D. Ill. 2007). "[E]ffective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable." *SEC v. Pentagon Capital Mgmt. PLC*, 844 F. Supp. 2d 377, 425 (S.D.N.Y. 2012).

District courts have "broad discretion" when calculating the amount of disgorgement. *See SEC v. Michel*, 521 F. Supp. 2d 795, 830 (N.D. Ill. 2007); *see also SEC v. Wyly*, 2013 WL 2951960, at *2 (S.D.N.Y. 2013) (noting the district court's "wide latitude"); *SEC v. Constantin*, 2013 WL 1828815, at *2 (S.D.N.Y. 2013).

The amount of disgorgement should include "all gains flowing from the illegal activities." *SEC v. J.T. Wallenbrock & Assoc.*, 440 F.3d 1109, 1114 (9th Cir. 2006) (awarding disgorgement of $253 million); *SEC v. Mortenson*, 2013 WL 991334, at *4 (E.D.N.Y. 2013) ("Where, as here, a fraud is pervasive, it is appropriate to order the defendant to disgorge all ill-gotten gains realized during the course of the fraud scheme."); *SEC v. Harris*, 2012 WL 759885, at *2 (N.D. Tex. 2012) ("[A] court may order the defendant to disgorge a sum of money equal to all the illegal payments he received.").

Exactitude is not required. *See SEC v. Haligiannis*, 470 F. Supp. 2d 373, 385 (S.D.N.Y. 2007). The SEC needs to present only a "reasonable approximation" of a defendant's ill-gotten gains. *See Platform Wireless Int'l Corp.*, 617 F.3d at 1096; *SEC v. Whittemore*, 659 F.3d 1, 7 (D.C. Cir. 2011). Once the SEC has presented a "reasonable approximation," the burden shifts to the defendant to establish that the disgorgement figure is not a reasonable approximation. *See Platforms Wireless Int'l Corp.*, 617 F.3d at 1096; *SEC v. Happ*, 392 F.3d 12, 31 (1st Cir. 2004). Green Box Detroit does not get the benefit of the doubt. "As the wrongdoer, [Green Box Detroit] must bear the risk of uncertainty in calculating the amount of disgorgement." *Id.*; *see also SEC v. Patel*, 61 F.3d 137, 140 (2d Cir. 1995).

Here, this Court should order Green Box Detroit to pay disgorgement totaling $1,815,861. The SEC is supporting its request for disgorgement with a declaration from Jean Javorski, a staff accountant for the Division of Enforcement. *See* Ex. 3. Ms. Javorski has decades of experience, and has worked on this matter since 2015. She examined the underlying financial records, traced the flow of funds, and prepared summaries of the sources and uses. Her declaration explains the basis for the SEC's disgorgement request in greater detail.

In a nutshell, Green Box Detroit raised approximately $4,475,000 from the EB-5 investors. Of that amount, $845,000 was commingled with funds from other investors (meaning investors who were not EB-5 investors), and $3,630,000 was not commingled. The commingling has an impact on the methodology for calculating disgorgement.

First, the commingled funds. *See* Javorski Decl., at ¶¶ 19 – 25. Green Box Detroit commingled $845,000 from EB-5 investors with $750,000 from non-EB-5 investors, for a total of $1,595,000. A little more than half of the commingled funds ($845,000 of the $1,595,000, or 53%) came from the EB-5 investors. Of the $1,595,000, Green Box Detroit spent approximately $591,000 on uses that were permissible, or arguably permissible, or unknown. After subtracting those amounts, the subtotal is $1,004,000. So, Green Box Detroit spent at least $1,004,000 of the commingled funds on improper uses.

The next step is to subtract the money that Van Den Heuvel spent on himself, totaling $210,300. Van Den Heuvel is responsible for the amounts that he spent on himself. After subtracting Van Den Heuvel's personal spending ($210,300) from the improper spending of commingled funds ($1,004,000), the remaining amount is $793,700.

The final step is to allocate a percentage of that amount to the EB-5 investors (because some, but not all, of the commingled funds came from them). The EB-5 investors contributed

53% of the commingled funds. So, the disgorgement amount of the commingled funds is 53% of $793,700, which totals $420,661.

Second, the non-commingled funds. *See* Javorski Decl., at ¶¶ 26 – 31. Green Box Detroit raised approximately $4,475,000 from the EB-5 investors, and $3,630,000 was not commingled with funds from other investors. Of the $3,630,000, Green Box Detroit spent approximately $1,645,000 on uses that were permissible, or arguably permissible, or unknown. After subtracting those amounts, the subtotal is $1,985,000. That is, Green Box Detroit spent approximately $1,985,000 of the non-commingled EB-5 funds on improper uses.

The next step is to subtract the money that Van Den Heuvel spent on himself, totaling $589,800. After subtracting Van Den Heuvel's personal spending ($589,800) from the improper spending of non-commingled funds ($1,985,000), the remaining amount is $1,395,200.

In the end, the proposed disgorgement amount is simply the combination of those two figures. Specifically, the disgorgement from the commingled funds ($420,661) plus the disgorgement from the non-commingled funds ($1,395,200) yields a total of $1,815,861.

All in all, the proposed disgorgement amount is a "reasonable approximation" of Green Box Detroit's ill-gotten gains. *See Platform Wireless Int'l Corp.*, 617 F.3d at 1096. The number is eminently fair, too. The proposed amount gives Green Box Detroit the benefit of the doubt for uses that were *arguably* permissible, or unknown. If anything, the proposed disgorgement amount errs on the side of being conservative.

B. This Court Should Order Green Box Detroit to Pay Prejudgment Interest.

In addition, Green Box Detroit should pay prejudgment interest on its ill-gotten gains. District courts enjoy "wide discretion" to award prejudgment interest on an award of disgorgement. *See SEC v. Lauer*, 478 Fed. Appx. 550, 557 (11th Cir. 2012); *SEC v. Sargent*, 329

F.3d 34, 40 (1st Cir. 2003) ("Prejudgment interest, like disgorgement, prevents a defendant from profiting from his securities violations."). An award of prejudgment interest is compensatory, not punitive. *Id.* Prejudgment interest makes sense from an equitable standpoint – otherwise, fraudsters would, in essence, enjoy an interest-free loan from their victims.

When calculating prejudgment interest, courts commonly use the IRS underpayment rate. *Id.*; *see also SEC v. Rosenthal*, 426 Fed. Appx. 1, at *2 (2d Cir. 2011); 26 U.S.C. § 6621(a)(2) (defining the IRS underpayment rate as the Federal Reserve short-term interest rate plus three percentage points).

Ms. Javorski calculated the prejudgment interest using the IRS underpayment rate, and the SEC's automated prejudgment interest calculator. *See* Javorski Decl., at ¶¶ 33 – 39. Her calculation involved two steps.

First, for the commingled portion of the disgorgement (that is, $420,661), Ms. Javorski calculated prejudgment interest from January 1, 2015 through August 31, 2017. The commingling of funds took place in 2014, and the last contribution of EB-5 funds to the commingled account took place in December, 2014. As a result, the prejudgment interest should begin in January, 2015. The calculation of prejudgment interest ends on August 31, 2017, the month before the SEC filed the Complaint. It yields prejudgment interest of $41,337.

Second, for the non-commingled portion of the disgorgement (that is, $1,395,200), Ms. Javorski calculated prejudgment interest from September 1, 2015 to August 31, 2017. The last investment of EB-5 funds that were not commingled took place in August, 2015. As a result, the prejudgment interest should begin in September, 2015. And once again, the calculation of prejudgment interest ends the month before the SEC filed this case. It yields prejudgment interest of $106,923.

Taken together, the prejudgment interest on the commingled funds ($41,337) plus the prejudgment interest on the non-commingled funds ($106,923) totals $148,260.

C. This Court Should Order Green Box Detroit to Pay a Civil Penalty.

A civil penalty is appropriate as well. District courts have statutory authority to award a civil penalty under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. *See* 15 U.S.C. § 77t(d); 15 U.S.C. § 78u(d)(3). Civil penalties punish past misconduct, and deter future misconduct.

"Civil penalties are intended to punish the individual wrongdoer and to deter him and others from future securities violations." *See SEC v. Monterosso*, 756 F.3d 1326, 1338 (11th Cir. 2014). A civil penalty is important to deter misconduct; without it, fraudsters would simply return to square-one. *See* Senate Report 337, 101st Cong., 2d Sess. 1, 10 (June 26, 1990) ("Since disgorgement merely requires the return of wrongfully obtained profits, it does not impose any meaningful economic cost on the law violator. The Committee, therefore, concluded that authority to seek or impose substantial money penalties, in addition to the disgorgement of profits, is necessary for the deterrence of securities law violations that would otherwise provide great financial returns to the violator.").

Congress created three tiers of penalties, with the third tier as the highest. *See* 15 U.S.C. § 77t(d)(2); 15 U.S.C. § 78u(d)(3). The amount of the penalty depends on the "facts and circumstances." *See* 15 U.S.C. § 77t(d)(2)(A); 15 U.S.C. § 78u(d)(3)(B)(i). A court may impose a third-tier penalty if the conduct involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," and if the violation "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." *See* 15 U.S.C. § 77t(d)(2)(C); 15 U.S.C. § 78u(d)(3)(B)(iii).

A third-tier penalty is capped at $775,000 "for each violation" for a company, or alternatively, the "gross amount of pecuniary gain." *See* 15 U.S.C. § 77t(d)(2)(C); 15 U.S.C. § 78u(d)(3)(B)(iii); *see also* 17 C.F.R. § 201.1003 & Table I (adjusting the penalties for inflation, and setting the maximum amount at $775,000). With regard to gross pecuniary gain, "many courts have imposed a single penalty equal to the amount of disgorgement." *See SEC v. Graulich*, 2013 WL 3146862, at *7 (D.N.J. 2013) (citing cases).

District courts have awarded substantial penalties, even in cases involving default judgments. For example, in *SEC v. Esposito*, the court granted the SEC's motion for a default judgment and awarded a one-time third-tier penalty totaling $775,000, the same penalty that the SEC seeks in this case. *See SEC v. Esposito*, 260 F. Supp. 3d 79, 94 (D. Mass. 2017).

The Federal Reporter is full of other examples of courts awarding significant penalties in cases involving default judgments. *See, e.g., SEC v. Lowrance*, 2012 WL 2599127, at *7 (N.D. Cal. 2012) (awarding the "maximum penalties," exceeding $200,000,000 between two defendants); *SEC v. One or More Unknown Traders in the Common Stock of Certain Issuers*, 825 F. Supp. 2d 26, 34 (D.D.C. 2010) (awarding civil penalties equal to the pecuniary gain); *SEC v. Locke Capital Mgmt., Inc.*, 726 F. Supp. 2d 105, 109 (D.R.I. 2010) (awarding civil penalties "equal to three times the disgorgement it owes"); *SEC v. Wynne*, 2010 WL 2898981, at *2 (E.D. Pa. 2010) (awarding the "maximum statutory penalty"); *SEC v. Becker*, 2010 WL 2165083, at *4 (S.D.N.Y. 2010) (awarding a third-tier penalty when a defendant defrauded 29 investors out of $1.3 million); *SEC v. Anticevic*, 2010 WL 2077196, at *8 (S.D.N.Y. 2010) (awarding a penalty of more than $20 million, an amount equal to "three times the total profits"); *SEC v. Great American Tech., Inc.*, 2010 WL 1416121, at *2 (S.D.N.Y. 2010) (awarding a third-tier civil penalty "equal to the scheme's pecuniary gain: $2,319,160"); *SEC v. Pitters*, 2010 WL 1413194,

at *6 (S.D. Fla. 2010) (awarding the "maximum civil penalty allowable for Third Tier violations"); *SEC v. Aimsi Tech., Inc.*, 650 F. Supp. 2d 296, 309 (S.D.N.Y. 2009) (awarding a third-tier penalty).

District courts have considerable discretion when setting the amount of a civil penalty. *See SEC v. Constantin*, 2013 WL 1453792, at *18 (S.D.N.Y. 2013). When considering the amount of a penalty, courts consider factors such as "the need for deterrence; defendant's acceptance of responsibility; defendant's net worth; the flagrancy of his violation; and other sanctions already imposed for the same conduct." *See SEC v. Michel*, 2008 WL 516369, at *1 (N.D. Ill. 2008); *see also SEC v. Haligiannis,* 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007) ("In determining whether civil penalties should be imposed, and the amount of the fine, courts look to a number of factors, including (1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition."). The factors are illustrative only – in the end, each case turns on its unique facts and circumstances.

This Court should impose a one-time third-tier penalty of $775,000. Green Box Detroit participated in a long-running fraud that extracted millions of dollars from investors. Green Box Detroit lied about what it would do with the investors' money. It deceived investors about its relationship with Cargill, and its financing through tax-exempt bonds. It misrepresented its intellectual property, and lied about its equipment. Truth be told, Green Box Detroit was not primarily in the recycling business at all – its true business was deception.

The lies were numerous, repeated, and egregious. And worst of all, they were successful. Green Box Detroit ultimately pocketed millions of dollars from investors, and did so under false pretenses. Green Box Detroit and Van Den Heuvel took advantage of foreign investors who thought they were financing a promising American company. Their money did not go exclusively toward recycling garbage. Instead, much of it went down the drain.

Simply put, the facts meet the standard for a third-tier penalty, and then some. The misconduct in this case involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," and the violation "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." *See* 15 U.S.C. § 77t(d)(2)(C); 15 U.S.C. § 78u(d)(3)(B)(iii).

A one-time penalty of $775,000 is especially reasonable when one considers the statutory maximum. Congress authorized district courts to award a civil penalty "for each violation." *See* 15 U.S.C. § 77t(d)(2)(C); 15 U.S.C. § 78u(d)(3)(B)(iii). Here, Green Box Detroit defrauded nine investors, plus the EB-5 regional center, and each one counts as a freestanding violation. *See* Cplt. ¶ 66. Under that metric, this Court could impose a civil penalty of $7,750,000 (that is, $775,000 times 10 violations). Alternatively, Congress authorized district courts to award a civil penalty equal to the "gross amount of pecuniary gain." *See* 15 U.S.C. § 77t(d)(2)(C); 15 U.S.C. § 78u(d)(3)(B)(iii). Here, the gross amount of pecuniary gain (*i.e.,* the disgorgement) is $1,815,861.

D. This Court Should Enjoin Green Box Detroit from Future Violations.

Finally, this Court should issue an injunction to protect the public from future misconduct by Green Box Detroit. An injunction is appropriate if a defendant has violated and is likely to continue to violate the securities laws. *See SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982).

When assessing the likelihood of future violations, courts look at the "totality of the circumstances," including such factors as: "[1] the gravity of harm caused by the offense; [2] the extent of the defendant's participation and his degree of scienter; [3] the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transaction; [4] the defendant's recognition of his own culpability; and [5] the sincerity of his assurances against future violations." *Holschuh*, 694 F.2d at 144; *see also United States v. Kaun*, 827 F.2d 1144, 1149-50 (7th Cir. 1987); *SEC v. Michel*, 521 F. Supp. 2d 795, 830 (N.D. Ill. 2007).

The facts weigh heavily in favor of an injunction.

Gravity of the Harm. Green Box Detroit extracted millions of dollars from investors through false pretenses. Each one of the nine investors contributed approximately $500,000. *See* Cplt. ¶ 85. That money is now lost.

Scienter. Green Box Detroit played a leading role in the fraud. Speaking through Van Den Heuvel as its CEO, Green Box Detroit made false representations about its business, its intended use of funds, its financing, and its resources. Green Box Detroit was the selling point of the fraud, and Green Box Detroit later misappropriated the money.

Recurring Fraud. Green Box Detroit's misconduct was not an isolated occurrence. Green Box Detroit raised funds for approximately one year, from September 2014 to August 2015. *See* Cplt. ¶¶ 5, 85. Some of the misrepresentations began even earlier. *See, e.g., id.* at ¶ 99.

Recognition of Culpability. Van Den Heuvel has pleaded guilty to wire fraud. But Green Box Detroit, for its part, has not admitted anything. As a corporate entity, Green Box Detroit has not come to terms with its wrongdoing, and had not recognized any culpability.

Assurances against Future Violations. Green Box Detroit has not made any assurances against future violations.

The one potential mitigating factor in favor of Green Box Detroit is its uncertain status. The company appears to be defunct, and is no longer in operation. The current status of corporate ownership is sketchy, too. Van Den Heuvel owned the company at the time in question (Cplt. ¶ 13), but he apparently transferred control of its parent company (EARTH – *see* Cplt. ¶ 15) a few years ago. Still, the company that ostensibly purchased EARTH has disclaimed any ownership of Green Box Detroit.

Even so, defunct companies can spring back to life. As things stand, there is nothing stopping Green Box Detroit from soliciting new investors, or attempting to get its business off the ground. An injunction would protect the public, and help prevent future investors from suffering the same fate as the EB-5 investors.

The sketchiness of the corporate ownership does not inspire confidence, either. Either Van Den Heuvel owns the company, or he doesn't. If he does, then the need for an injunction speaks for itself. If he doesn't, then Green Box Detroit could attempt to use the split from Van Den Heuvel to its advantage, and paint itself as a victim of Van Den Heuvel's fraud. The public needs to know that Green Box Detroit itself committed fraud, and deserves an injunction in its own right.

Conclusion

For the foregoing reasons, the SEC respectfully moves this Court to (1) enter final judgment against defendant Green Box Detroit; (2) order Green Box Detroit to pay disgorgement, prejudgment interest, and a civil penalty; and (3) enjoin Green Box Detroit from future violations of the federal securities laws.

Dated: August 13, 2019

Respectfully submitted,

s/ Steven C. Seeger

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EXHIBIT 1

LARA Corporations Online Filing System
Department of Licensing and Regulatory Affairs

ID Number: 801755547 Request certificate New search

Summary for: GREEN BOX NA DETROIT, LLC

The name of the DOMESTIC LIMITED LIABILITY COMPANY: GREEN BOX NA DETROIT, LLC

Entity type: DOMESTIC LIMITED LIABILITY COMPANY

Identification Number: 801755547 **Old ID Number:** E3874G

Date of Organization in Michigan: 02/28/2014

Purpose: All Purpose Clause

Date of In Existence But Not In Good Standing: 02/15/2017 **Term:** Perpetual

The name and address of the Resident Agent:

Resident Agent Name:	THE CORPORATION COMPANY				
Street Address:	40600 ANN ARBOR RD E STE 201				
Apt/Suite/Other:					
City:	PLYMOUTH	State:	MI	Zip Code:	48170

Registered Office Mailing address:

P.O. Box or Street Address:			
Apt/Suite/Other:			
City:		State:	Zip Code:

Act Formed Under: 023-1993 Michigan Limited Liability Company Act

Managed By:

Members

View filings for this business entity:

ALL FILINGS
ANNUAL REPORT/ANNUAL STATEMENTS
CERTIFICATE OF CORRECTION
CERTIFICATE OF CHANGE OF REGISTERED OFFICE AND/OR RESIDENT AGENT
RESIGNATION OF RESIDENT AGENT
CERTIFICATE OF ASSUMED NAME

View filings

Comments or notes associated with this business entity:

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	**Case No. 17-cv-1261**
RONALD VAN DEN HEUVEL, and GREEN BOX NA DETROIT, LLC,	:	
Defendants.	:	

FINAL JUDGMENT AGAINST DEFENDANT GREEN BOX NA DETROIT, LLC

This Court hereby enters final judgment against defendant Green Box NA Detroit, LLC ("Defendant") as follows:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's

officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $1,815,861, representing profits gained as a result of the conduct alleged in the Complaint, plus $148,260 in prejudgment interest, and a civil penalty in the amount of $775,000 pursuant to 15 U.S.C. § 77t(d) and 15 U.S.C. § 78u(d)(3), for a total of $2,739,121.

Defendant shall satisfy this obligation by paying $2,739,121 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Green Box NA Detroit, LLC as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part

of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: _____, 2019

_____
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	**Case No. 17-cv-1261**
RONALD VAN DEN HEUVEL, and GREEN BOX NA DETROIT, LLC,	
Defendants.	

DECLARATION OF JEAN JAVORSKI

I, Jean Javorski, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and accurate and that, if called upon to do so, I could competently testify as follows:

1. I am employed as a Staff Accountant by the United States Securities and Exchange Commission in its Chicago Regional Office, located at 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604. I have worked for the Division of Enforcement since 1994.

2. My official duties with the Division of Enforcement include participating in fact-finding inquiries and investigations to determine whether the federal securities laws have been, are presently, or are about to be violated, and assisting in the Commission's litigation of securities laws violations.

3. I became a Certified Public Accountant ("CPA") in the state of Illinois in 1981.

4. As part of my duties with the SEC, I was assigned to participate in the investigation and subsequent litigation concerning possible misconduct relating to Ronald Van

Den Heuvel and Green Box NA Detroit, LLC ("Green Box Detroit"). I have performed various tasks to assist with the fact-gathering. I began working on the investigation in 2015.

5. During its investigation, the SEC obtained documents and information from a variety of sources relating to Van Den Heuvel and Green Box Detroit. The documents include account statements, accounting records and other business records, financial statements, and other materials. As part of the investigation, I also learned other facts regarding Van Den Heuvel and Green Box Detroit, including information about the use of funds.

6. I have personally reviewed and analyzed a large volume of financial records relating to this matter. In particular, I have reviewed and analyzed records of the Defendant at two accounts at Merrill Lynch, Pierce, Fenner & Smith: (1) the account of Green Box Detroit, and (2) the account of Green Box NA LLC. Specifically, I reviewed the account statements and underlying documentation about the funds received, checks written, and electronic transfers made in the accounts. I reviewed the accounts from June 2014 through December 2015.

7. Based upon my review of the records above, I prepared summaries showing the deposits and withdrawals in the two accounts at Merrill Lynch.

8. The statements in this declaration are based upon my personal review of the financial records obtained by the SEC during its investigation.

9. I have prepared schedules that summarize the information reflected on the voluminous financial records that I reviewed. *See* Exhibits A – D. The schedules summarize the sources and uses of the funds that Green Box Detroit received from the EB-5 investors. I have attached those schedules as exhibits to this declaration. To the best of my knowledge, the exhibits are fair, accurate, and complete summaries of the documents and information that I personally reviewed.

10. **Exhibit A** is a summary of the total funds raised by Green Box Detroit.

11. **Exhibit B** is a summary of the EB-5 funds that Green Box Detroit commingled with funds from other investors (that is, investors who were not EB-5 investors).

12. **Exhibit C** is a summary of the EB-5 funds that were not commingled with funds from other investors (that is, investors who were not EB-5 investors).

13. **Exhibit D** is a summary of the total disgorgement amount for Green Box Detroit.

The Total Funds from the EB-5 Investors

14. Van Den Heuvel and Green Box Detroit raised approximately $4,475,000 in EB-5 funds from nine investors in China. *See* Exhibit A. Green Box Detroit received the funds between September 2014 and August 2015. Each of the nine investors contributed $500,000 (but $25,000 from one investor was held in escrow, for a total of $4,475,000).

15. The EB-5 investors sent their funds to SMS Investment Group VI, LLC ("SMS 6"), an entity affiliated with Green Detroit Regional Center, LLC, an EB-5 regional center. SMS 6, in turn, sent the investors' funds to Green Box Detroit. Specifically, SMS 6 sent the funds to the Green Box Detroit account at Merrill Lynch.

16. Green Box Detroit did not maintain separate accounts for each investor. Instead, the funds from the EB-5 investors were pooled in the same account.

The Commingling of Funds

17. Green Box Detroit commingled some of the EB-5 funds with funds from other investors (that is, investors who were not EB-5 investors). Specifically, Green Box Detroit commingled $845,000 of the EB-5 funds with funds from other investors.

18. Green Box Detroit did not commingle the rest of the money from the EB-5 investors (that is, $3,630,000 of the $4,475,000) with funds from other investors.

The Commingled Funds

19. Green Box Detroit commingled $845,000 from EB-5 investors with $750,000 from other (non-EB-5) investors, for a total of $1,595,000. I will refer to the $1,595,000 as the "commingled funds." A little more than half of the commingled funds ($845,000 of the $1,595,000, or 53%) came from the EB-5 investors.

20. Of the $1,595,000, Green Box Detroit spent approximately $1,004,000 on known misuses of funds.

21. For example, Green Box Detroit spent approximately $325,000 to repay an individual for loans extended to other Green Box entities.

22. Green Box Detroit spent the rest of the commingled funds (that is, $591,000 of the $1,595,000) on uses that were permissible, or arguably permissible, or unknown.

23. Of the $1,004,000 (that is, the commingled funds that were misused), Van Den Heuvel spent approximately $210,300 on himself. For example, he spent approximately $40,300 on Green Bay Packers tickets.

24. After subtracting Van Den Heuvel's personal spending ($210,300) from the improper spending of commingled funds ($1,004,000), the remaining amount is $793,700.

25. The EB-5 investors contributed 53% of the commingled funds. Using that percentage, I calculate that the proposed disgorgement amount of the commingled funds is $420,661 (that is, 53% of $793,700 totals $420,661).

The Non-Commingled Funds

26. Green Box Detroit raised $4,475,000 from the EB-5 investors, and $3,630,000 of the $4,475,000 were not commingled with funds from other investors.

27. Of the $3,630,000, Green Box Detroit spent approximately $1,985,000 on known misuses of funds.

28. For example, Green Box Detroit spent approximately $630,000 to repay an individual for loans extended to other Green Box entities.

29. Green Box Detroit spent the rest of the commingled funds (that is, $1,645,000 of the $3,630,000) on uses that were permissible, or arguably permissible, or unknown.

30. Of the $1,985,000 (that is, the non-commingled funds that were misused), Van Den Heuvel spent approximately $589,800 on himself.

31. After subtracting Van Den Heuvel's personal spending ($589,800) from the improper spending of non-commingled funds ($1,985,000), the remaining amount is $1,395,200.

The Proposed Disgorgement Amount

32. The disgorgement from the commingled funds ($420,661) plus the disgorgement from the non-commingled funds ($1,395,200) yields a total of $1,815,861.

Prejudgment Interest

33. I calculated prejudgment interest on the proposed disgorgement amount of $1,815,861.

34. I performed the calculation using the SEC's prejudgment interest calculator (the "calculator"), which incorporates the IRS quarterly rates of interest on tax underpayments and refunds. The calculator requires the following variables: (1) the principal amount; (2) the start date; and (3) the end date. It generates a spreadsheet report with columns showing the date range within each quarter, the annual percentage rate, the period rate, the quarterly interest amount, and the total amount (*i.e.,* principal plus prejudgment interest). For the start date, the calculator defaults to the first day of the month after the date entered. For the end date, the calculator

defaults to the last day of the month before the date entered. Both defaults result in a slight reduction of the total amount of interest calculated.

35. **Exhibit E** and **Exhibit F** reflect my calculations. I generated those documents using the SEC prejudgment interest calculator.

36. I performed two separate calculations. First, I calculated prejudgment interest on the disgorgement attributable to commingled funds ($420,661). Second, I calculated prejudgment interest on the disgorgement attributable to non-commingled funds ($1,395,200).

37. For the commingled portion of the disgorgement (that is, $420,661), I calculated prejudgment interest from January 1, 2015 through August 31, 2017. I began the calculation in January 1, 2015, because the last contribution of EB-5 funds that were commingled took place in December, 2014. I ended the calculation in August 31, 2017, because the SEC filed its Complaint in September 2017. Using those dates, and that violation amount, I calculated that prejudgment interest totals $41,337. *See* Ex. E.

38. For the non-commingled portion of the disgorgement (that is, $1,395,200), I calculated prejudgment interest from September 1, 2015 to August 31, 2017. I began the calculation in September 1, 2015, because the last investment of EB-5 funds that were not commingled took place in August, 2015. I ended the calculation in August 31, 2017, because the SEC filed its Complaint in September 2017. Using those dates, and that violation amount, I calculated that prejudgment interest totals $106,923. *See* Ex. F.

39. Taken together, the prejudgment interest on the commingled funds ($41,337) plus the prejudgment interest on the non-commingled funds ($106,923) totals $148,260.

40. The proposed disgorgement amount ($1,815,861) plus the prejudgment interest ($148,260) totals $1,964,121.

I, Jean Javorski, declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of August, 2019.

Jean Javorski

Jean Javorski

Exhibit A to

Javorski Declaration

Funds Raised by Green Box Detroit
in the EB-5 Offering

Total raised from EB-5 offering:	$4,475,000
Amount of EB-5 funds commingled with other (non-EB-5) funds:	$845,000
Amount of EB-5 funds not commingled:	$3,630,000

Exhibit B to

Javorski Declaration

Funds Raised by Green Box Detroit
in the EB-5 Offering
(Commingled)

Funds from EB-5 Investors:	$845,000	(53%)
Funds from Other Sources:	$750,000	(47%)
Total Commingled Funds:	$1,595,000	(100%)

Category	Amount
Total Commingled Funds	$1,595,000
Permissible uses	$200,000
Arguably permissible	$226,000
Unknown	$165,000
Reduce from Total	$591,000
Subtotal	$1,004,000
Van Den Heuvel Personal Use *Reduce from Subtotal*	$210,300
Total Disgorgeable Amount	$793,700
% of total funds from EB-5 investors	53%
Green Box Detroit Disgorgement from Commingled Funds	**$420,661**

Exhibit C to

Javorski Declaration

Funds Raised by Green Box Detroit
in the EB-5 Offering
(Non-Commingled)

Total Raised from EB-5 Offering: $4,475,000

Amount of EB-5 Funds Not Commingled: $3,630,000

Category	Amount
Total Non-Commingled Funds	$3,630,000
Permissible uses	$200,000
Arguably permissible	$604,000
Unknown	$621,000
Unknown (expenditures of $7,500 or less)	$220,000
Reduce from Total	$1,645,000
Subtotal	$1,985,000
Van Den Heuvel Personal Use *Reduce from Subtotal*	$589,800
Green Box Detroit Disgorgement from Non-Commingled Funds	**$1,395,200**

Exhibit D to

Javorski Declaration

Total Disgorgement for Green Box Detroit

Disgorgement from Commingled Funds:	$420,661
Disgorgement from Non-Commingled Funds:	$1,395,200
Total Disgorgement:	**$1,815,861**

Exhibit E to

Javorski Declaration

U.S. Securities and Exchange Commission
Prejudgment Interest Report

Prejudgment Interest on the Commingled Funds

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				**$420,661.00**
01/01/2015-03/31/2015	3.00%	0.74%	$3,111.74	$423,772.74
04/01/2015-06/30/2015	3.00%	0.75%	$3,169.59	$426,942.33
07/01/2015-09/30/2015	3.00%	0.76%	$3,228.39	$430,170.72
10/01/2015-12/31/2015	3.00%	0.76%	$3,252.80	$433,423.52
01/01/2016-03/31/2016	3.00%	0.75%	$3,232.91	$436,656.43
04/01/2016-06/30/2016	4.00%	0.99%	$4,342.70	$440,999.13
07/01/2016-09/30/2016	4.00%	1.01%	$4,434.09	$445,433.22
10/01/2016-12/31/2016	4.00%	1.01%	$4,478.67	$449,911.89
01/01/2017-03/31/2017	4.00%	0.99%	$4,437.49	$454,349.38
04/01/2017-06/30/2017	4.00%	1%	$4,531.05	$458,880.43
07/01/2017-08/31/2017	4.00%	0.68%	$3,117.87	$461,998.30

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
01/01/2015-08/31/2017	**$41,337.30**	**$461,998.30**

Exhibit F to

Javorski Declaration

U.S. Securities and Exchange Commission
Prejudgment Interest Report

Prejudgment Interest on the Non-Commingled Funds

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				**$1,395,200.00**
09/01/2015-09/30/2015	3.00%	0.25%	$3,440.22	$1,398,640.22
10/01/2015-12/31/2015	3.00%	0.76%	$10,576.02	$1,409,216.24
01/01/2016-03/31/2016	3.00%	0.75%	$10,511.37	$1,419,727.61
04/01/2016-06/30/2016	4.00%	0.99%	$14,119.70	$1,433,847.31
07/01/2016-09/30/2016	4.00%	1.01%	$14,416.83	$1,448,264.14
10/01/2016-12/31/2016	4.00%	1.01%	$14,561.78	$1,462,825.92
01/01/2017-03/31/2017	4.00%	0.99%	$14,427.87	$1,477,253.79
04/01/2017-06/30/2017	4.00%	1%	$14,732.07	$1,491,985.86
07/01/2017-08/31/2017	4.00%	0.68%	$10,137.33	$1,502,123.19

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
09/01/2015-08/31/2017	**$106,923.19**	**$1,502,123.19**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	**Case No. 17-cv-1261**
RONALD VAN DEN HEUVEL, and GREEN BOX NA DETROIT, LLC,	:	**Hon. William Griesbach**
Defendants.	:	

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2019, I served a copy of the SEC's Motion for Default Judgment Against Defendant Green Box NA Detroit, LLC, and the accompanying exhibits and Memorandum in Support, on Ronald Van Den Heuvel by U.S. Mail at the following address:

Ronald Van Den Heuvel
c/o FPC Duluth
4464 Ralston Dr.
Duluth, MN 55811

Dated: August 13, 2019

Respectfully submitted,

s/ Steven C. Seeger

Steven C. Seeger (seegers@sec.gov)
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