Case No. 25-3391

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LORAL LANGEMEIER AND LIVE OUT LOUD, LLC

DEFENDANTS – APPELLANTS
V.

SECURITIES AND EXCHANGE COMMISSION
PLAINTIFF – RESPONDENT

ON APPEAL FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF NEVADA
THE HONORABLE LARRY R. HICKS AND THE HONORABLE ANNE R. TRAUM
CASE NO. 2:22-CV-01942-ART-CSD

APPELLANT'S OPENING BRIEF

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FRAP 26.1 Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel of certifies the following:

Appellant Loral Langemeier is an individual. Appellant Live Out Loud, LLC is a Nevada Limited Liability Company, with no parent corporation or company. No publicly-traded company holds 10% or more of Live Out Loud, LLC.

DATED this 17th day of September, 2025.

Respectfully submitted,
BLACK & WADHAMS

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STATEMENT OF JURISDICTION

The United States District Court for the District of Nevada ("the lower court") had subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331.

The lower court entered a final judgment as to Defendants-Appellants Loral Langemeier ("Langemeier") and Live Out Loud, LLC ("LOL") on June 29, 2025. [1-EOR-0003]. This judgment finally resolved all claims between the Plaintiff-Respondent the Securities and exchange Commission (the "SEC") and Langemeier and LOL.

A Notice of Appeal was timely filed on June 25, 2025. [6-EOR-1137]. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED

1. Whether the lower court lacked jurisdiction to order disgorgement of funds received by nonparty NV Huskers, LLC (NV Huskers), where there was no evidence that the funds were ever received by any Defendant to this action.
2. Whether the remedies order contradicted the lower court's own partial summary judgment order and improperly included legitimate business proceeds - funds beyond any ill-gotten "net profits."
3. Whether or not the disgorgement order was impermissibly punitive in the absence of any victims or interference with any legally protected interests.

STATEMENT OF THE CASE

This case is a civil enforcement action filed by the SEC for alleged violations of the Exchange Act and Advisor Act. Appellants Langemeier and LOL run a small but successful financial coaching and literacy business, which – through LOL – often hosts conferences known as "Big Table" events, wherein prospective investors get to learn about various investment vehicles and strategies for investing like millionaires.

LOL charged speakers a "marketing fee" to speak at the conferences. This action followed enforcement actions against Thomas Powell and Stefan Toth, who settled SEC claims against them and their companies, which alleged that they marketed unregistered oil and gas securities. LOL and Langemeier were brought into the fray when they entered into an agreement to allow Powell and Toth to be speakers at "Big Table" events, and entered into a non-standard marketing fee agreement wherein Langemeier and LOL would receive a success-based commission of 3% of all investments garnered by Powell and Toth as a result of speaking at the "Big Table Events." The commission agreement only garnered LOL $3,112.50 and was quickly abandoned in favor of LOL's standard flat-fee marketing agreements.

This case was presided over by Judge Larry R. Hicks through summary judgment. Judge Hicks found that the success-based commission agreement, and the $3,112.50 received under the agreement created an impermissible interest in

the securities in Langemeier and LOL, which required Langemeier to be registered as a broker-dealer and to disclose her interest in the oil and gas securities to attendees at her events. Judge Hicks found the flat-fee marketing agreements were not illegal. Judge Hicks tragically passed away prior to the remedies portion of the case, which was assigned to Judge Anne R. Traum.

At the remedies portion, Judge Traum ordered disgorgement of the legitimate flat-rate marketing fees (which were paid to NV Huskers, LLC – a nonparty over which the lower court had no jurisdiction). Judge Traum ordered disgorgement of an additional, unspecified $4,807. Judge Traum ordered additional injunctive relief and civil penalties which are not at issue on appeal.

The remedies order did not identify any victims – as there were none – and did not identify how the disgorged funds would be distributed for the benefit of any victims. It disgorged the legitimate flat-fee marketing fees generated by NV Huskers, was far in excess of the "ill-gotten gains" and contradicted the summary judgment order previously entered by Judge Hicks. This court should vacate the amount of any disgorgement above the $3,112.50 found by Judge Hicks to be the profits of the illegal success-based commission agreement. Alternatively, this Court should reverse and remand.

…

STATEMENT OF FACTS

A. Langemeier Hosts Financial Literacy Events Through Live Out Loud

Defendants Langemeier and LOL are well-known public figures in the "Financial Education and-Coaching" ("FEC") community represented by the likes of Suze Orman, Tony Robbins and Robert Kiyosaki. [4-EOR-0698-0699] Defendants Langemeier and her FEC company, LOL fought on behalf of this community through the action below. Like Kiyosaki's "Rich Dad Poor Dad," Langemeier has authored six best-selling financial literacy books. [5-EOR-843] She has educated thousands of readers with some attending LOL seminar events such as the "Big Table" to learn about the topics covered in her books and hear from third-party subject matter speakers ranging from how to open a publishing business to the use of A.I. in stock market investing. [2-EOR-0092].

LOL's "Big Table" events were large-in person conferences wherein individuals seeking interested investors could pay a marketing fee to be permitted to speak to the "Big Table" audience about the types of investments they offered. [2-EOR-0187]. On the other side of the coin, interested prospective investors got the opportunity to learn about a wide range of investment vehicles. [5-EOR-1097]. The structure of LOL events was similar to the NFL organizing the Superbowl and charging advertisers for ad time – the marketing fees paid by speakers allowed LOL to defray the costs of the "Big Table" events, and make money on the events from ticket sales. [2-EOR-0187].

B. The SEC's Prior Enforcement Actions

Prior to the instant suit against Langemeier and LOL, the SEC sought and settled enforcement actions against three "Big Table" speakers and their respective companies regarding their sale of unregistered oil and gas ("O&G") instruments:

- In the Matter of Resolute Capital Partners, Ltd., LLC, et al., AP File No. 3-20597 (Sept. 24, 2021) (settlements by Thomas J. Powell ("Powell") and Stefan T. Toth ("Toth") and their respective companies, Resolute Capital Partners, Ltd., LLC ("RCP") and Homebound Resources, LLC ("HR")); and
- In the Matter of Benjamin D. Williams ("Williams"), AP File No. 3-20707 (Jan. 21, 2022) (settlement by Williams and not naming his company, iSelf Direct, LLC ("ISD")). Powell and RCP, along with Toth and HR, were the sponsoring issuers of the O&G instruments and Williams was an unregistered broker engaged specifically to sell RCP's O&G instruments structured as debt instruments.

[2-EOR-0201; 2-EOR-0095]. Powell was an expert on O&G and raising capital to finance O&G projects and Toth was an expert on O&G well operations. [4-EOR-810]. Jones explained the overarching role Powell played respecting the O&G instruments and related HR and RCP projects:

> He was the control person for everything. He -- he was the manager of the entities that were the manager of the funds. The only thing that Tom didn't control, I guess, was the operations going on at HomeBound. But he was the one that would prepare

> the projections for offerings, control the funds that came in from investors. Tom would set up relationships with different service providers like WealthForge or a company called Assure, which was kind of a fund administration service.

[5-EOR-1014]. Jones further testified that Powell controlled the O&G offerings and its lawyers and broker-dealer. *Id.* He also said that RCP had the "ultimate say" in taking in money for the O&G instruments. [5-EOR-1023]. Jones also testified that Langemeier was not an affiliate of Powell. [5-EOR-1017]. Langemeier testified that she had no ownership, director or officer status with RCP. [5-EOR-0853]. Langemeier testified that she was never involved in the preparation of any O&G instrument offering documents or their distribution. [4-EOR-0741].

C. The Mountain High Capital Partnership Agreement

Powell saw the value of LOL "Big Table" events as a platform to teach seminar attendees about O&G and potential financial benefits of this alternative asset class. [2-EOR-0241]. As subject matter speakers, both Powell and Toth were part of the educational process and did not solicit specific O&G instruments during and within any LOL event. [4-EOR-0634-0640]. Powell articulated that Langemeier and LOL were not involved in selling any securities, rather it was the LOL's audience – 300,000 strong – that Powell wanted to reach:

> My specific guidance was specifically in that she was -- no way was she to sell. In no way was she to affect the transaction. In no way she supposed to strong arm anybody or get into an investment.

> It's that her purview of what understand to be more than 300,000 people.

[5-EOR-0855-0856]. Powell further testified that Langemeier and LOL did not bring in investors:

> She [Langemeier] didn't bring in investors. She brought in referrals. People then made their own decision to become investors and -- or not become investors. So she brought educated -- ideally, people to be educated or educated people to make their own decisions.

([5-EOR-0864]. Prospect leads from LOL events could occur by interested participants putting their names and contact information on sign-up sheets; being given a link to RCP's website[1]; and/or being introduced to various RCP public relations staff attending seminars such as Brooke Nunes, Candace Powell or Tone Iverson. [2-EOR-0243].

In April of 2016, Powell proposed an alternative to the flat marketing fees LOL charged for speakers at its "Big Table" events. Powell, Toth and their entities proposed the parties enter. into the Mountain High Capital Partnership Agreement ("MHCPA"). [2-EOR-0108]. The MHCPA provides that "[p]artners who bring a commission to the company earn a fee/percentage fair to the deal." [*Id.*] The agreed commission structure was that "[t]he originating source of the investor earns up to a 10% fee" and "if an investor comes from the LOL pool and is closed by ISD, LOL receives 3% and ISD receives 7%." [*Id.*]

[1] To keep FEC education separate from O&G instruments solicitation, LOL's website did not have a link to RCP's website. (LD 30-31).

Thus, LOL received a 3% "success based" commission from any investments that were generated from the pool of attendees at the LOL events. [*Id.*]. The MHCPA designates LOL as the entity to receive payments on LLL's behalf. [*Id.*]. In HR's "Master Template – SEA 3 Tracker," a spreadsheet created to track commissions due to LOL under the MHCPA, it lists commissions totaling $3,112.50 to be payable to LOL. [3-EOR-0532]. This $3,112.50 payment is the only-commission-based payment to LOL that exists.

Because the commission-based structure of the MHCPA yielded such low commissions to LOL, Langemeier required the parties to return to a marketing flat-fee for HR to continue to attend the LOL events. In May of 2018, a "Marketing Engagement Agreement" (the "MEA") between HR and NV Huskers ("NVH"), was entered into. [3-EOR-0329-0334]. The MEA provided for a fixed monthly $25,000 marketing fee and made clear that NVH's obligation was limited to introductions and HR was responsible for "closing" on the sale including the "proper documentation thereof." [*Id.*] Not long after the parties entered into the MEA, the parties ceased joint cooperation and parted ways. [4-EOR-0657].

Pursuant to the terms of the MEA, NV Huskers received $400,000 in fixed marketing fees. [2-EOR-0069]. Neither LOL nor Langemeier received any payments under the MEA.

D. The SEC Brings the Underlying Action

On June 15, 2022, the SEC brought the underlying civil enforcement action against Langemeier and LOL only, alleging three causes of action: (1) Violations of Section 15(a) of the Exchange Act, (2) Violations of Sections 5(a) and 5(c) of the Securities Act, and (3) Violations of Section 206(2) of the Advisers Act. [5-EOR-1113]

After completion of discovery, the SEC filed a Motion for Partial Summary Judgment ("MPSJ"). [5-EOR-0544]. The MPSJ was granted by then-presiding judge Larry R. Hicks. [2-EOR-0197].

Hicks reviewed the 800 pages of exhibits attached to the MPSJ and found that only the success-based commission structure of the MHCPA was illegal. [*Id.*]. Though Hicks noted that Langemeier and LOL presented evidence that they received lawful, flat-rate marketing fees under the MEA [2-EOR-0206], that did not absolve Langemeier and LOL of their illegal receipt of the $3,112.50 of success-based pay under the MHCPA. [2-EOR-0207]. The Court found that the success-based commission structure required Langemeier to be a licensed broker-dealer. [*Id.*]. Further, Judge Hicks found that because the MHCPA entitled LOL to receive compensation any time an event attendee invested in the oil and gas securities, Langemeier "violated her fiduciary duty to disclose material conflicts of interest." [2-EOR-0223]

The lower court reserved the issue of the proper remedies for subsequent briefing. [*Id.*]

In the interim, Judge Hicks was tragically struck by a truck and killed while crossing the street in front of the Federal Courthouse in Reno, and the case was reassigned to Judge Anne R. Traum, following his passing. [2-EOR-0136]. Though Hicks had presided over the case, virtually in its entirety, Judge Traum stepped in to render the final judgment. [*Id.*]

E. The Remedies Phase

Months following the entry of partial summary judgment, the SEC filed its Remedies Motion, requesting the following remedies:

- A permanent injunction restraining and enjoining Defendants from, directly or indirectly, violating Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78o(a)]; Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77e(a) and (c)]; and Section 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(2)];
- A conduct-based injunction that permanently restrains and enjoins Langemeier from, directly or indirectly, including, but not limited to, through any entity she owns or controls, participating in the issuance, purchase, offer, or sale of any security, provided, however, that she not be prevented from purchasing or selling securities for her own account;

- Disgorgement of $684,661 plus interest in the amount of $205,162; and
- $100,000 in penalties for Langemeier and $100,000 in penalties for LOL

[2-EOR-0137-0196]. Thus, the SEC sought approximately $1.1M in recovery from Langemeier and LOL – this figure is in stark contrast to the $75,000 the SEC sought from Thomas Powell and Stefan Toth, and the $225,000 the SEC sought from Resolute Capital and Homebound Resources – the very architects of the entire oil and gas securities investment scheme and their respective companies. Indeed, the SEC itself in this action described Powell and Toth's actions as a "giant Ponzi Scheme." [2-EOR-0027].

At oral argument on the remedies motion, two things were apparent: the Court was not clear as to what funds were "ill-gotten gains" and the SEC had no idea what any of the funds recovered in the case would be utilized for. The Court asked the SEC to describe what conduct constituted LOL and Langemeier's violations, and to identify the "victims," if any:

> [THE COURT] Do you have a number -- is there a total number of violations here, and is there a number impacted individuals?
>
> MR. FITZSIMMONS: The number of individuals, offhand, I don't have a precise number, but, you know, certainly, you know, more than a dozen. I could get back to you, Your Honor, with a specific number of her clients who ultimately did purchase these oil and gas securities.

[2-EOR-0026]. When specifically asked how any recovered funds would be used, the SEC had no specific answer:

> THE COURT: Okay.
> What happens to the monies, to the disgorgement monies?
>
> MR. FITZSIMMONS: So the disgorgement monies, uh, and the penalty monies, we have to wait and see whether Live Out Loud and Langemeier pays the judgment. And, you know, if the judgment is not paid, we have to see how our collection efforts are to obtain those monies.
>
> But once we do have the money, then what we do is work with our folks in our distribution office to try to make distributions to investors. And we would, frankly, like nothing more than to get some of this money back to some of these folks.

[2-EOR-0034]. In this case, there were no victims with pecuniary losses, and none of the motionwork or evidence submitted by the SEC identifies any "victims" or the "folks" that the SEC intends to get "money back to." Indeed, when the Court specifically inquired as to how the funds recovered from the Toth and Powell settlements had been distributed, the SEC (represented by the same attorney who brokered the Toth and Powell settlements) had no answer, and dodged the question with vague assertions unsupported by any evidence or direct knowledge:

> THE COURT: Okay. And has the money for, like, Powell and Toth already been distributed?
>
> MS. FITZSIMMONS: I think the latest update we got from distributions is that they have hired someone to be in that process.

[2-EOR-0035]. The SEC did not disclose who "we" is, who was "hired" or why someone needed to be specially hired for a relatively commonplace process at the

SEC. The SEC also did not describe that the "process" was or what its goal would be.

The Court then turned its attention to the requested $400,000 in disgorgements. Counsel for Langemeier and LOL noted that those were funds paid to NV Huskers– a nonparty – under the terms of the MEA which required flat $25,000 monthly marketing fees be paid to NV Huskers. [2-EOR-0044]. Only the approximately $3,100.00 in payments under the MHCPA were success-based commissions. [2-EOR-0044].

Even though NV Huskers was not included in the litigation as even a nominal party, the Court ordered that the $400,000 of flat-fee payments received by NV Huskers be disgorged, as well as $4,807 in other unspecified funds, for a total disgorgement of $404,807.00. [1-EOR-0009-0019].

The Court went on to grant the obey-the law injunction requested by the SEC and issue $50,000 in civil penalties. [*Id.*].

Adding in prejudgment interest, the total monetary judgment issued against Langemeier and LOL was $576,109.28. [1-EOR-0003-0008].

The final judgment in this case was issued by the lower Court on April 29, 2025. [*Id.*]. Langemeier and LOL timely filed their notice of appeal on May 25, 2025. [6-EOR-1137].

. . .

SUMMARY OF ARGUMENT

This appeal is limited to the disgorgement provisions of the lower court's remedy order.

This Court should reverse the disgorgement order on numerous bases. First, $400,000 of the $404,807 disgorgement order was legitimate flat-rate marketing fees paid to non-party NV Huskers. The lower court lacked jurisdiction to order disgorgement of funds received by a nonparty, and which there was no evidence that any defendant before the court ultimately received those funds. Second, the lower court, in its summary judgment order, previously noted that it was the success-based fees, not the flat-fees that were legally problematic. Thus, the disgorgement order exponentially exceeds the amount of the identified ill-gotten gains: $3,112.50. Finally, the disgorgement order is improper, where the SEC did not identify any "victims" or any protected right that was interfered with by LOL and Langemeier, nor did the SEC submit any evidence to demonstrate that the disgorged funds would be utilized in a way that benefits the non-existent "victims."

STANDARDS OF REVIEW

A. Jurisdiction

This Court reviews jurisdictional issues de novo, even when they are raised for the first time on appeal. *See United States v. Anderson*, 472 F.3d 662, 666 (9th Cir. 2006) ("Jurisdictional issues are reviewed de novo . . . ."); *United States v.*

Kahlon, 38 F.3d 467, 469 (9th Cir. 1994) (noting that jurisdictional claims are an exception to the rule that issues generally cannot be raised for the first time on appeal).

B. Summary Judgment

This Court reviews "*de novo* the district court's decision to grant summary judgment." *Ets-Hokin v. Skyy Spirits*, Inc., 225 F.3d 1068, 1073 (9th Cir. 2000). Under the summary judgment standard, this Court "must determine whether, viewing the evidence in the light most favorable to the non-moving party, there are any genuine issues of material fact and whether the district court correctly applied the substantive law." *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th Cir. 2002).

C. Disgorgement Remedy

Awarding disgorgement is reviewed for abuse of discretion. *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010). Basing a disgorgement order "on an erroneous view of the law" is an abuse of discretion. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990).

ARGUMENT

A. The Lower Court Lacked Jurisdiction to Disgorge Funds Paid to a Nonparty.

There is no dispute that the $400,000 in flat-rate marketing fees that the lower court ordered disgorged was paid to NV Huskers. Indeed, the SEC in its Complaint noted that the payments were made to the entity NV Huskers. [5-EOR-

1127]. It is unclear why the SEC did not include NV Huskers in the case as a defendant, or at minimum as a nominal/relief defendant. The lower court recognized in its remedy order that the disgorged funds were paid to NV Huskers. [1-EOR-0015]. Similarly at oral argument, LOL and Langemeier's counsel pointed out that the funds were paid to NV Huskers. [2-EOR-0044].

Oddly, neither the SEC nor the Court appeared to be interested in disgorging the $3,112.50 that was paid to LOL as success-based commissions under the MHCPA, which is the one payment that the Court, in its partial summary judgment order found to be illegal.

There is no discussion as to the Court's basis for personal or subject matter jurisdiction over NV Huskers or funds that were received by NV Huskers. It appears that the SEC and the lower court simply decided to ignore NV Husker's status as its own legal entity. Nevada Law does not permit legal entities to be cavalierly cast aside for the sake of mere convenience.

In Nevada, a "limited liability company is an entity distinct from its managers and members" NRS 86.201(3). Nevada statutes further provide that "[u]nless otherwise provided in the articles of organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of this State is individually liable for the debts or liabilities of the company." NRS 86.371. "[A]lthough corporations are generally to be treated as separate legal entities, the equitable remedy of piercing

the corporate veil may be available to a plaintiff in circumstances where it appears that the corporation is acting as the alter ego of a controlling individual." *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 902, 8 P.3d 841, 845 (2000) (internal quotations omitted). An alter ego determination must be supported by substantial evidence. *LFC Mktg. Grp., Inc*., 116 Nev. at 904, 8 P.3d at 846. However, "[t]he corporate cloak is not lightly thrown aside." *Baer v. Amos J. Walker, Inc*., 85 Nev. 219, 220, 452 P.2d 916, 916 (1969). Here, the record contains no "substantial evidence" in supporting any non-existent alter ego claim. The record contains no alter ego evidence at all.

While existing law allows for courts to order disgorgement of funds held by "nominal" or "relief" defendants, who did not participate in the alleged wrongdoing, but had possession of proceeds therefrom, the law still requires that the nominal or relief defendants be added as defendants, and brought before the jurisdiction of the court through service of process. *SEC v. Ross*, 504 F.3d 1130, 1141 (9th Cir. 2007). Even if the SEC had added NV Huskers as a nominal defendant, which it did not do, the SEC was still required to prove that NV Huskers (1) held any funds in trust for the benefit of Langemeier and (2) that NV Huskers had no legitimate claim to the money. The SEC presented no such evidence and made no such arguments. NV Huskers, in fact, did have a legitimate claim to the funds – they were the flat fees paid by speakers to speak at events, just like all other speakers pay.

The Supreme Court has explicitly required that refraining from "impos[ing] disgorgement liability on a wrongdoer for benefits that accrue to his affiliates . . . in a manner . . . at odds with the common-law rule requiring individual liability for wrongful profits, " *Liu v. SEC*, 591 U.S. 71 (2020), at 90, and "restrict[ing] awards to net profits from wrongdoing after deducting legitimate expenses," *id*. at 84.

Because the flat-rate marketing fees were received by NV Huskers LLC, which was not a party to this action, nor was there any argument or evidence supporting veil-piercing, the lower court lacked subject matter jurisdiction over the payments, and personal jurisdiction over NV Huskers, the payee, the disgorgement judgment is void. A final judgment is "void" if the Court jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law. *See In re Ctr. Wholesale, Inc.*, 759 F.2d 1440, 1448 (9th Cir. 1985); *Jones v. Giles*, 741 F.2d 245, 248 (9th Cir. 1984).

B. The Disgorgement was Exponentially More than the LOL and Langemeier's "Not Proceeds" and Contradicted the Lower Court's Earlier Determination

In its order granting partial summary judgment in favor of the SEC, the lower court (then presided over by Judge Hicks) found that "the record contains evidence supporting the theory that Defendants received reimbursements and marketing fees…." and included an accompanying footnote amplifying that "[t]he

following evidence supports this theory: the MEA between HR and NV Huskers, under which HR agreed to pay NV Huskers a set-monthly retainer fee of $25,000 in exchange [for] prospective oil and gas project investor introductions at LOL events, a document tracking what appears to be monthly retainer payments; a spreadsheet classifying payments HR submitted to NV Huskers as "Marketing Fees" and testimony that LOL received "marketing fees" and not "fees based on acquisitions or sales" [2-EOR-0200].

The Hicks Summary Judgment Order concludes that "[w]hile Defendants have introduced evidence that they may have received marketing fees and reimbursement expenses for the portion of the Relevant Period controlled by the MEA, **that evidence does not create a genuine issue for trial as to whether they received transaction-based commissions during the portion of the Relevant Period controlled by the MHCPA**." [2-EOR-0208]. However, the Order continues and states that the only record evidence of transaction-based commissions actually paid to Defendants is a "$1,125 commission [added] into a larger sum total of 3% commissions owed to LOL as of March 14, 2017, **totaling $3,112.50**…" [2-EOR-0207 (emphasis added)]. The Hicks Summary Judgment Order takes great care to explain why commission are illegal, while flat fee agreements are not. First, the Hicks Order discusses that an investment adviser generally needs to make disclosures regarding how the Advisor "might be deriving additional compensation from [the investor's] trading activities." [2-

EOR-221 *citing S.E.C. v. Criterion Wealth Mgmt. Servs., Inc.*, 599 F. Supp. 3d 932, 947 (C.D. Cal. Apr. 25, 2022)]. LOL only received additional compensation based on whether the conference attendees actually invested in the oil and gas securities under the MHCPA. The flat-rate marketing fees paid to NV Huskers were required to be paid whether or not Powell and Toth were successful in attracting investors by speaking at LOL events.

The Hicks Order made it abundantly clear that the securities law violations stemmed from the commission structure of the MHCPA – a structure that was not present in the MEA under which NV Huskers received the $400,000 in payments. Judge Hicks ruled "It is undisputed that Defendants' entitlement to receive compensation for her clients' investments in the oil and gas securities she recommended to clients constitutes a conflict of interest." [*Id.*]. The "entitlement to receive compensation" for investments is the success-based commissions under the MHCPA. Further, Hicks ruled "there is no question of material fact that Defendants acted as investment advisers who failed to disclose material conflicts of interest, specifically their **entitlement to compensation when clients invested** in the very oil and gas securities that they recommended." Compensation derived from actual investments by clients is commission.

A "commission" is a form of compensation set as a fixed percentage of what is sold or transferred. Black's Law Dictionary 306 (9th ed. 2009) defines commission as "a fee paid to an agent or employee for a particular transaction,

usually as a percentage of the money received from the transaction, a real-estate agent's commission>"). The Oxford English Dictionary (2d ed. 1989) defines commission as "a remuneration for services or work done as agent, in the form of a percentage on the amount involved in the transactions; a pro rata remuneration to an agent or factor."

Despite Judge Hick's ruling that the commission structure of the MHCPA was problematic while the flat-fee structure of the MEA was not problematic, the lower court contradicted its own order and ordered the disgorgement of all funds received by NV Huskers under the MEA.

In *Liu v. SEC*, the Supreme Court reaffirmed the Commission's authority to seek and the Court's authority to order disgorgement "that does not exceed a wrongdoer's net profits and is awarded for victims." *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020). Here, LOL and Langemeier did not receive the flat-rate marketing fees paid under the terms of the MEA – those payments were made to NV Huskers. Thus, the NV Huskers marketing fee receipts cannot be the "net profits" of a "wrongdoer" because NV Huskers was not adjudicated a wrongdoer in the proceedings below or any other proceeding. Further, Judge Hicks reviewed the MEA and found nothing illegal in its terms, in contrast to the terms of the MHCPA, under which LOL admittedly received $3,112.50 in commissions.

Similarly, the SEC made no effort to show what funds received by NV Huskers were actually received by LOL or Langemeier, which would have been

relatively easy to do given the SEC's access to all of LOL and Langemeier's tax returns. As the Plaintiff, the SEC bore the burden of proof in the case below. The SEC was required to prove – while viewing the facts in a light most favorable to Langemeier and LOL – the amount of ill-gotten (commission-based) gains received by either Langemeier or LOL. If the court had questions as to what the $25,000 monthly marketing fees paid to NV Huskers were for, that was a material issue that should have been decided by a jury. Similarly, if the lower court did not understand how much of the monthly marketing fees were actually received by a defendant in this case, that was a material question for determination by a jury. The only evidence before the Court was that Langemeier testified in her deposition that NV Huskers received $404,807 under the terms of the MEA (though the 1099 reflected only $400,000 being received). Nothing evidence was adduced proving that the marketing fees were ill-gotten gains of wrongdoing. To the contrary, Judge Hicks found the MEA to not be problematic in its compensation structure.

The SEC was simply unsatisfied with the fact that the lower court determined that the only commission-style payments received by any defendant to the action below totaled $3,112.50. Refusing to accept this figure as the proper total of ill-gotten gains, the SEC attempted to muddy clear waters upon a change in presiding judge to obtain a disgorgement order that included flat-rate marketing fees that had already been determined to be legally sound.

The law of the case doctrine generally prohibits a court from considering an issue that has already been decided by that same court or a higher court in the same case. *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012). Here, Judge Hicks' Summary Judgment Order had already determined which compensation was "ill-gotten" and what compensation was legitimate. While Hicks reserved determination of the proper remedies for a later date, "net profits" received by Langemeier and LOL as a result of wrongdoing had been established. Preserving the integrity of the Hicks Summary Judgment Order is especially important here, where Judge Hicks presided over the case for years before passing away in the final remedies stage.

C. The Disgorgement Order is Impermissible Where There Are No Victims, No Pecuniary Losses, and No Interference with Protected Rights

"The SEC is authorized by both the Securities Act of 1933 and the Securities Exchange Act of 1934 to bring civil enforcement actions seeking equitable relief in the form of injunctions against those committing violations of the Acts." *SEC v. World Cap. Mkt., Inc*., 864 F.3d 996, 1003 (9th Cir. 2017) (citing 15 U.S.C. §§ 77t(b), 78u(d)(1)). "In such actions, federal courts may grant 'any equitable relief that may be appropriate or necessary for the benefit of investors,' including disgorgement of the gains obtained from securities law violations." *Id.* (quoting 15 U.S.C. § 78u(d)(5)); *see also SEC v. Platforms Wireless Int'l Corp*., 617 F.3d 1072, 1096 (9th Cir. 2010) ("'[A] district court has broad equity powers

to order the disgorgement of ill-gotten gains obtained through the violation of the securities laws.'" (*quoting SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998)).

The Supreme Court has twice restricted the SEC's disgorgement power in recent years. The first time in *Kokesh v. SEC*, 137 S. Ct. 1635, 198 L. Ed. 2d 86 (2017) concerning statute of limitations issues not present in this case, and, more recently and relevant here, in *Liu v.SEC*, 591 U.S. 71 (2020). The Supreme Court in *Liu* addressed an "antecedent question," that is, "whether, and to what extent, the SEC may seek 'disgorgement' in the first instance through its power to award 'equitable relief' under 15 U.S.C. § 78u(d)(5), a power that historically excludes punitive sanctions." *Id.* at 74. *Liu* held that if the disgorgement "does not exceed a wrongdoer's net profits and is awarded for victims," then it is equitable relief. *Id. Liu* limited the SEC's disgorgement power such that the SEC could not seek disgorgement for wrongful acts committed more than five years before filing of the SEC's enforcement action, could not receive disgorgement as equitable relief in amounts that exceeded the wrongdoer's profits, and was required to award such equitable relief to the victims.

Finally, *Liu* determined that the SEC's equitable, profits-based remedy must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains. To hold otherwise would "render meaningless the latter part of §78u(d)(5)". *Liu v. SEC*, 591 U.S. 71, 89, 140 S. Ct. 1936, 1948

(2020). While §78u(d)(5) was amended in 2021 following the issuance of the Liu decision, there is no indication that the amendment was in reaction the *Liu* decision, as the amendments were sought prior to the Liu opinion being issued. The amendments simply clarified that disgorgement was an available remedy in SEC civil enforcement actions.

In this case, there is no evidence of any victim or victims that suffered pecuniary losses as a result of Langemeier and LOL's wrongdoing. While Langemeier and LOL are mindful of this Court's recent decision in *SEC v. Sripetch*, No. 24-3830, 2025 WL 2525848 (9th Cir. Sept. 3, 2025) rejecting the argument that the SEC must prove pecuniary harm to investors before obtaining disgorgement under 15 U.S.C. §§ 78u(d)(5) and (d)(7), Langemeier and LOL note that the *Sripetch* decision deepened a circuit split on this issue, and reserve the right to assert that pecuniary harm is a prerequisite to disgorgement orders under 15 U.S.C. §§ 78u(d)(5) and (d)(7). It should also be noted that the lower court only discussed and awarded disgorgement under 78u(d)(5) – which provides that disgorgement is available as an *equitable* remedy. The Liu court determined that, as an equitable remedy "the wrongdoer should not be punished by paying more than a fair compensation to the person wronged." *Liu v. SEC*, 591 U.S. 71, at 80. *Liu* held that disgorgement under § 78u(d)(5) must conform to common-law limitations, by "return[ing] a defendant's gains to wronged investors" when

practical, *id.* at 88, refraining from and "restrict[ing] awards to net profits from wrongdoing after deducting legitimate expenses," *Id*. at 84.

Here, no investors suffered any losses, and no evidence of pecuniary harm was presented to the lower court, simply because there was none.

There were also no victims identified, nor any evidence submitted of any victim whose "protected rights" were interfered with by Langemeier or LOL. *Sripetch* held that the sole prerequisite for disgorgement is an interference of violation of a victim's legally protected interests. The "interference" or "violation" must necessarily be something more than a mere violation of securities law, otherwise the "victim" requirement would be rendered nugatory. Though *Sripetch* doesn't provide much guidance on what might constitute the "violation" or "interference" this case is easily factually distinguished from *Sripetch.* In that case, the SEC brought a civil enforcement action against Sripetch and fourteen other defendants in 2020. The Commission alleged that the defendants "worked in concert to engage in numerous fraudulent schemes and other violations of the federal securities laws, involving at least 20 penny stock companies," and that they "obtained at least $6 million in illicit sale proceeds from this illegal conduct, **while harming retail investors** who purchased shares during the schemes." *United States SEC v. Ongkaruck Sripetch*, No. 24-3830, 2025 LX 348333, at *9 (9th Cir. Sep. 3, 2025).

Here, Langemeier did not manipulate the market for the oil and gas securities, nor did she artificially inflate the prices of the securities for her own benefit.

In the First Circuit's *Navellier* case, which was followed by this Court in *Sripetch*, the First Circuit noted that We have similarly emphasized that "[t]he case law holds with conspicuous clarity that when a fiduciary has secured an undue advantage by virtue of his position, equitable relief is available even in the absence of direct economic loss to the complaining party." *SEC v. Navellier & Assocs*., 108 F.4th 19, 41 (1st Cir. 2024). Here, Langemeier obtained no undue advantage over investors.

Langemeier and LOL did not profit at the expense of their seminar attendees or clients. The SEC has been unable to identify a single victim who lost money as a result of any action or inaction of Langemeier or LOL. Langemeier and LOL simply entered into a compensation agreement that was improperly structured. This agreement – the MHCPA – was the catalyst for Langemeier and LOL's violations of the Exchange Act and Advisor Act. Had Langemeier and LOL maintained an agreement for flat, non-success based fees they would not be where they are today. Neither the SEC nor the Court below identified any victim's "right" that was interfered with by Langemeier or LOL. Further, the SEC did not and cannot articulate how the funds would be used for the "benefit" of the

unidentified victims. Under *Liu* and its progeny, the disgorgement order was unlawful.

CONCLUSION

It is an unusual case where a Court bases a disgorgement order on: (1) funds received by an entity that is not party to the action; over which the Court had no jurisdiction; (2) in absence of any evidence showing those funds were ultimately received by either defendant; (3) for amounts received pursuant to an agreement that the Court itself found to be a lawful, flat-fee agreement; (4) where the court had already identified the sum of the "ill-gotten" gains to be exponentially less; (5) where there are no identified victims and no pecuniary losses; and (6) where there is no articulated plan to distribute the funds or otherwise use the funds in a manner "for the benefit" of unspecified victims and the SEC isn't even sure what they did with the other $687,000 in funds they received in the companion cases.

Langemeier and LOL respectfully request that this Court reverse the disgorgement order as to any amount over the $3,112.50 that Judge Hicks determined to be ill gotten gains of the unlawful commission fee agreement.

DATED this 17th day of September, 2025.

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CERTIFICATE OF COMPLIANCE

This brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is 6,671 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

DATED this 17th day of September, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 17, 2025.

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