

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:0:21-cv-61644-AHS

SECURITIES AND EXCHANGE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 MJ CAPITAL FUNDING, LLC,)
 MJ TAXES AND MORE INC., and)
 JOHANNA M. GARCIA,)
)
 Defendants.)
)

**JOINT NOTICE OF PARTIAL SETTLEMENT WITH DEFENDANT
JOHANNA M. GARCIA AND JOINT REQUEST FOR STAY**

Plaintiff Securities and Exchange Commission (the “SEC”) and Defendant Johanna M. Garcia (“Defendant”) respectfully advise the Court that they have reached a settlement on the non-monetary relief the SEC seeks in the Complaint. The parties hereby file the Consent of Defendant to Judgment of Permanent Injunction and Other Relief and a proposed Judgment for the Court’s consideration.

In light of the “parallel federal criminal investigation” referenced by Defendant [DE 131], the parties seek a stay of this matter with respect to the SEC’s request for monetary relief so that the SEC can address its request for monetary relief once criminal sentencing is concluded (in the event that the Defendant does not prevail at trial). If the trial results in a criminal sentence, it may include restitution or other monetary relief which may impact the amount of, or obviate the need for, disgorgement, prejudgment interest and/or a civil penalty in this case. As such, the parties respectfully ask the Court to allow the SEC: (1) to bring the

appropriate disgorgement and civil penalty motion against Defendant, if necessary, once her sentencing has been completed; and (2) 90 days after Defendant's sentencing to obtain authority from the Commission to request a specific disgorgement and/or penalty amount as needed.

Furthermore, at the Court's instruction, the SEC will submit a status report every 120 days or such interval as the Court deems appropriate.

Nothing herein stays or otherwise impacts the Receiver and her ongoing rights and duties under the Receivership Order [DE 17] and Expansion Order [DE 79].

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 7.1, the SEC's counsel has conferred with the Receiver's counsel, who has no objection to the relief proposed herein.

August 31, 2022

Respectfully submitted,

<p><u>/s/ Stephanie N. Moot</u> Stephanie N. Moot Senior Trial Counsel Fla. Bar No. 30377 Direct Dial: (305) 982-6313 Email: moots@sec.gov</p> <p>Raynette R. Nicoleau Fla. Bar No. 278210 Senior Counsel Direct Dial: (305) 982-6308 Fax: (305) 536-4154</p> <p>Securities and Exchange Commission 801 Brickell Avenue, Suite 1950 Miami, Florida 33131 Telephone: (305) 982-6300 Facsimile: (305) 536-4146 <i>Counsel for Plaintiff</i></p>	<p><u>/s/ Carl F. Schoeppl</u> Carl F. Schoeppl, Esq. Fla. Bar No. 818518 Terry A.C. Gray Fla. Bar No. 100732 Schoeppl Law, P.A. 4651 North Federal Highway Boca Raton, Florida 33431-5133 tgray@schoeppllaw.com <i>Counsel for Defendant Johanna M. Garcia</i></p> <p><u>/s/ David M. Garvin</u> David M. Garvin Fla. Bar No. 347736 David M. Garvin, P.A. 200 S. Biscayne Blvd., Suite 3150 Miami, Florida 33131 Tel: (305) 371-8101 Fax: (305) 371-8848 Email: dgarvin@garvin.law <i>Counsel for Defendant Johanna M. Garcia</i></p>
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 31, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Stephanie N. Moot
Stephanie N. Moot

SERVICE LIST

Carl F. Schoeppl, Esq.
Terry A.C. Gray, Esq.
Kyle G. DeValerio, Esq.
Schoeppl Law, P.A.
4651 North Federal Highway
Boca Raton, Florida 33431-5133
carl@schoeppllaw.com
tgray@schoeppllaw.com
kyle@schoeppllaw.com
Counsel for Defendant Johanna M. Garcia

David M. Garvin, Esq.
David M. Garvin, P.A.
200 South Biscayne Blvd., Suite 3150
Miami, Florida 33131
Tel: (305) 371-8101
Fax: (305) 371-8848
Email: dgarvin@garvin.law
Counsel for Defendant Johanna M. Garcia

Benjamin J. Widlanski, Esq.
David L. Rosendorf, Esq.
Robert J. Neary, Esq.
Bernice C. Lee, Esq.
Kozyak Tropin Throckmorton
2525 Ponce de Leon, 9th Floor
Miami, Florida 33134
bwidlanski@kttl.com
dlr@kttl.com
rn@kttl.com
blee@kttl.com
Counsel for Receiver, Corali Lopez-Castro, Esq.

CONSENT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:0:21-cv-61644-AHS

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
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v.)
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MJ CAPITAL FUNDING, LLC,)
MJ TAXES AND MORE INC., and)
JOHANNA M. GARCIA,)
)
Defendants.)
)

CONSENT OF DEFENDANT JOHANNA M. GARCIA

1. Defendant Johanna M. Garcia (“Defendant”) acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over her and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 13 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the Judgment in the form attached hereto (the “Judgment”) and incorporated by reference herein, which among other things:

a. permanently restrains and enjoins Defendant from violation of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a) and 77e(c)]; Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]; 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;

b. provides that the Court shall order disgorgement of ill-gotten gains, including

prejudgment interest, against Defendant; and

c. provides that the Court shall order a civil penalty against Defendant.

3. Defendant acknowledges that the civil penalty paid pursuant to the Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant agrees that she shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that she is entitled to, nor shall she further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant agrees that she shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

4. Defendant agrees that she shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Judgment, regardless of whether such penalty amounts or any part thereof are added

to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that she shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Defendant agrees that the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant further agrees that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission, and that prejudgment interest shall be calculated from June 1, 2020, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that in connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that she did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

6. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

7. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

8. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

9. Defendant agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

10. Defendant will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

11. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions.

12. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's

entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that she shall not be permitted to contest the factual allegations of the complaint in this action.

13. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the

allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the 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). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

14. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

15. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 8-24-2022

J. Garcia
JOHANNA M. GARCIA

STATE OF FLORIDA)

COUNTY OF PALM BEACH)

On AUGUST 24, 2022, before me personally appeared Johanna M. Garcia, who () is personally known to me, or (X) produced a FLORIDA driver's license bearing her name and photograph as identification, and who executed this Consent, and acknowledged to me that she executed the same.

[Signature]

Notary Public
Commission expires:

Approved as to form:

Terry A.C. Gray
Carl F. Schoeppl, Esq.
Terry A.C. Gray, Esq.
Kyle G. DeValerio, Esq.
Schoeppl Law, P.A.
4651 North Federal Highway
Boca Raton, Florida 33431-5133
carl@schoeppllaw.com
tgray@schoeppllaw.com
kyle@schoeppllaw.com



and

David M. Garvin, Esq.
David M. Garvin, P.A.
200 South Biscayne Boulevard, Suite 3150
Miami, Florida 33131
dgarvin@garvin.law
Counsel for Defendant Johanna M. Garcia

TEXT OF PROPOSED ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:0:21-cv-61644-AHS

SECURITIES AND EXCHANGE COMMISSION,)
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Plaintiff,)
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v.)
)
MJ CAPITAL FUNDING, LLC,)
MJ TAXES AND MORE INC., and)
JOHANNA M. GARCIA,)
)
Defendants.)
)

JUDGMENT AS TO DEFENDANT JOHANNA M. GARCIA

The Securities and Exchange Commission (“SEC” or “Commission”) having filed a Complaint and Defendant Johanna M. Garcia (“Garcia” or “Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over her and the subject matter of this action; consented to entry of this Judgment; without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph IV), waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

PERMANENT INJUNCTIVE RELIEF

A.

Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder

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,

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (a) any investment in or offering of securities;
- (b) the prospects for success of any business, product, or company;
- (c) any returns on investment;
- (d) the use of investor funds or investment proceeds; or
- (e) the misappropriation or misuse of investor funds or investment proceeds.

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 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).

B.

Section 17(a) of the Securities Act of 1933 (“Securities Act”)

IT IS HEREBY 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,

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (a) any investment in or offering of securities;
- (b) the prospects for success of any business, product, or company;
- (c) any returns on investment;

(d) the use of investor funds or investment proceeds; or

(e) the misappropriation or misuse of investor funds or investment proceeds.

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 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).

C.

Section 5 of the Securities Act

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration

statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

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 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.

OFFICER AND DIRECTOR BAR

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

III.

DISGORGEMENT, PREJUDGMENT INTEREST AND CIVIL PENALTY

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Court shall determine the amounts of the

disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from June 1, 2020, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that she did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

IV.

BANKRUPTCY NONDISCHARGEABILITY

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 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.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VI.

RETENTION OF JURISDICTION

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 Judgment.

VII.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

DONE AND ORDERED in Chambers in _____, Florida, this ____ day of _____ 2022.

UNITED STATES DISTRICT JUDGE