

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.)
_____)

**PLAINTIFF’S MOTION FOR ORDER RE-EXTENDING ASSET FREEZE AS TO
DEFENDANT JOHANNA M. GARCIA**

Plaintiff Securities and Exchange Commission (the “SEC”) respectfully moves to re-extend the asset freeze over Defendant Johanna M. Garcia (“Garcia”), *pro se*, for another 120 days because her assets do not exceed the likely disgorgement award against her and there is concern that she will dissipate assets. In support of this motion, the SEC states:

I. INTRODUCTION

On August 9, 2021, the SEC charged Garcia and her companies, MJ Capital Funding, LLC and MJ Taxes and More, Inc., for violating the antifraud and registration provisions of the federal securities laws. *See* Complaint, DE 1. Garcia and the MJ Companies raised at least \$194.1 million from over 9,000 investors who were tricked into believing they were funding loans to small businesses when, in reality, their money was used to fund “returns” to existing investors, pay commissions to sales agents, and fund personal expenses by Garcia and other insiders. *See* Amended Complaint, DE 130.

On August 12, 2021, the Court granted the SEC's emergency *ex parte* request for an asset freeze over Garcia and the MJ Companies. *See* Order, DE 16.¹ The Court, with Garcia's consent, has since extended the asset freeze over her several times. *See* DE 25, 47, 127, 146, 160, 192, 208, and 225. The current asset freeze expires on November 29, 2024. *See* DE 240.

On August 24, 2023, Garcia was indicted by a federal grand jury for conspiracy to commit wire fraud and mail fraud (18 U.S.C. § 1349), wire fraud (18 U.S.C. § 1343), and mail fraud (18 U.S.C. § 1341), based on the same conduct alleged in this action. *United States v. Garcia*, Case No. 23-cr-20350-JEM (S.D. Fla.) ("Criminal Case"). On July 16, 2024, Garcia pled guilty to conspiracy to commit wire fraud and mail fraud (18 U.S.C. § 1349). She is currently in federal custody awaiting sentencing, which is scheduled for December 3, 2024. *Id.* at DE 66.

II. THE COURT SHOULD EXTEND THE ASSET FREEZE

An extension of the asset freeze is warranted to ensure that a disgorgement award can be satisfied and to prevent further dissipation of investor funds. *See SEC v. Lauer*, 478 F. App'x 550, 554 (11th Cir. 2012) (unpublished) ("[I]f potential disgorgement is greater than the value of the defendant's assets, the district court can order a full asset freeze"); *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 734 (11th Cir. 2005). "The SEC's burden for showing the amount of assets subject to disgorgement (and, therefore available for freeze) is light: a reasonable approximation of a defendant's ill-gotten gains is required. Exactitude is not . . .". "Once the SEC has produced a reasonable approximation of the defendant's unlawfully acquired assets, the burden shifts to the defendant to demonstrate the SEC's estimate is not reasonable." *SEC v. Monterosso*, 756 F.3d 1326, 1337 (11th Cir. 2014).

¹On the same date, the Court also granted the SEC's request for appointment of the Receiver over the MJ Companies. *See* Order, DE 17.

The SEC's burden to demonstrate the potential for dissipation of funds is even lighter. *See FTC v. IAB Marketing Associates, LP*, 972 F. Supp. 2d 1307, 1313 n.3 (S.D. Fla. 2013) ("There does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze.") (citing *ETS Payphones*, 408 F.3d at 734, and *SEC v. Lauer*, 445 F. Supp. 2d 1362, 1367, 1370 (S.D. Fla. 2006)); *SEC v. Gonzalez de Castilla*, 145 F. Supp. 2d 402, 415 (S.D.N.Y. 2001) ("[T]he SEC must demonstrate only . . . a concern that defendants will dissipate their assets . . .").

Here, the SEC has no information indicating that Garcia has assets in excess of the likely disgorgement award. *See* Amended Complaint, DE 130 at ¶¶ 1 and 33 (alleging that Garcia and the MJ Companies raised at least \$194.1 million in investor funds); *see* Receiver's Thirteenth Interim Report, DE 261 at p. 2 (stating that "Ms. Garcia and over 400 promoters induced thousands of investors to invest an estimated \$200 million in the MJ Capital Ponzi scheme . . ."). Garcia has not submitted any evidence showing that her assets exceed the likely disgorgement award. In fact, prior to going into federal custody, she consented to the SEC's multiple requests to extend the asset freeze over her.

Concern remains that assets will disappear if Garcia has access to them. She has been charged with fraud, and misappropriation and misuse of investor funds, to the tune of hundreds of millions of dollars, in both this action and the Criminal Case. Moreover, Garcia continued to defraud investors while in federal custody. As part of a "new venture," Garcia and other co-conspirators raised "approximately \$3.2-\$4 million from at least twenty individuals." *See* Criminal Case, Factual Proffer, DE 45 at p. 3. They "told investors that their money would be used to fund general contractors who worked on commercial and residential properties through merchant cash advance loans. In truth, bank records show that there were little to no merchant cash advance activity, and the money raised was used to pay off previous investors." *Id.*

III. CONCLUSION

Based on the foregoing, the SEC respectfully requests that the Court re-extend the asset freeze over Garcia for another 120 days. A proposed order is attached for the Court's consideration.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(3)

Counsel for the SEC attempted to confer with Garcia, *pro se*, regarding the instant motion via e-mail on November 19, 2024. To date, counsel for the SEC has not heard back from Garcia, and thus, at this point, we do not have her consent.

Counsel for the SEC conferred with counsel for the Receiver, who does not have an objection to the proposed relief.

November 20, 2024

Respectfully submitted,

By: /s/ Stephanie N. Moot
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 20, 2024, 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

Via U.S. Mail and E-mail

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ORDER

THIS CAUSE is before the Court upon Plaintiff Securities and Exchange Commission’s Motion for Order Re-Extending Asset Freeze as to Defendant Johanna M. Garcia, filed November 20, 2024. Having considered the motion, the record, and finding that good cause exists, it is hereby

ORDERED AND ADJUDGED as follows:

1. Plaintiff’s Motion for Order Re-Extending Asset Freeze as to Defendant Johanna M. Garcia is **GRANTED**.

2. The asset freeze over Defendant Johanna M. Garcia, entered pursuant to this Court’s Order of Preliminary Injunction and Other Relief by Consent as to Defendant Johanna M. Garcia (DE [47]) and extended by the Court’s Orders (DE [127]), (DE [146]), (DE [160]), (DE [192]), (DE [208]), (DE [220]), (DE [225]), (DE [232]), and (DE [240]) is further **EXTENDED for 120 days from the date of this Order**.

3. All remaining terms of this Court's Order of Preliminary Injunction and Other Relief by Consent as to Defendant Johanna M. Garcia (DE [47]) not modified by this Order remain in effect.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this ____ day of _____, 2024.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE