

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 23-cr-10075-1-RGS
	)	
JOSEPH A. PADILLA,	)	
	)	
Defendant	)	

**GOVERNMENT’S MOTION FOR RESTITUTION**

Pursuant to the Judgment entered in this case ordering that restitution will be awarded in an amount to be determined, the government hereby moves that the Court enter restitution in the amount of \$3,163,827.91 to 33 victims. The government also moves that the Court enter an amended judgment reflecting the restitution as ordered.

The government has conferred with defense counsel, to whom the government produced the materials supporting the restitution request earlier today (namely, the victims’ trading records, the government’s reports of its interviews of the victims, and the government’s restitution calculations). Defense counsel requests, and the government proposes, that defense counsel be provided 21 days to review the materials in order to provide the defendant’s position on the government’s motion.

**BACKGROUND**

On August 17, 2023, pursuant to a plea agreement under Rule 11(c)(1)(C), Padilla pleaded guilty to one count of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, two counts of securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff(a), and one count of attempting to cause the production of an identification document without lawful authority, in violation of 18 U.S.C. §§ 1028(a)(1), (b)(2)(A), and (f). *See* Dkts. #135, 136. In the plea

agreement, the parties agreed that restitution would be awarded in an amount to be determined. *See* Dkt. #136 at 4.

As described more fully in the government’s sentencing memorandum (Dkt. #159), Padilla provided undisclosed control persons a route to market to flout the sale limitations in the federal securities laws that apply to control persons of penny stock companies and he used manipulative trading to support the scheme. Specifically, Padilla provided a service to undisclosed control persons who sought to secretly and quickly dump large quantities of penny stocks in coordination with promotional campaigns that generated demand for the stocks (together known as “pump-and-dumps”). Padilla sold the stocks via multiple accounts at Valor Capital, a broker in the Cayman Islands with which Padilla had a close, unofficial association. And to kick off the campaigns, Padilla used brokerage accounts in his name and in the names of friends and relatives to buy the stocks at increasing prices to artificially inflate their market prices. For these services, Padilla—through Valor Capital—expected to receive a fee on every share illegally sold during the pump-and-dumps.

Padilla pleaded guilty to engaging in this scheme with respect to two different issuers: Oncology Pharma, Inc. (ticker symbol ONPH) and Charlestowne Premium Beverages, Inc. (ticker symbol FPWM). On ONPH, Valor Capital sold three million fraudulently-obtained ONPH shares at Padilla’s direction between January 19, 2021 and July 7, 2021 (the “Relevant ONPH Period”), generating over \$77 million in gross proceeds. And on FPWM, Valor Capital sold five million fraudulently-obtained shares at Padilla’s direction between February 18, 2021 and April 19, 2021 (the “Relevant FPWM Period”), generating over \$7.9 million in gross proceeds.

On November 7, 2023, in accordance with the parties’ plea agreement pursuant to Rule 11(c)(1)(C), the Court sentenced Padilla to 66 months imprisonment and ordered Padilla to pay \$3

million in forfeiture. *See* Dkt. #166. The Court also ordered restitution in an amount to be determined.<sup>1</sup> *See* Dkt. #166 at 8. On January 31, 2024, the Court granted a government motion to extend the government’s deadline to submit its restitution request to March 15, 2024. *See* Dkts. #180, 181.

### LEGAL FRAMEWORK

The Mandatory Victims Restitution Act (MVRA) requires restitution to all persons “directly and proximately harmed as a result” of Padilla’s conspiracy offense. *See* 18 U.S.C. § 3663A(a), (c)(1)(A)(ii). When an offense “involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern” is a victim. 18 U.S.C. § 3663A(a)(2); *United States v. Chin*, 965 F.3d 41, 59 (1st Cir. 2020). Scientific precision is not the standard; rather, a restitution order is appropriate if it is “record-based and constitutes a fair appraisal of [the victims’] actual losses.” *United States v. Gonzalez-Calderon*, 920 F.3d 83, 85 (1st Cir. 2019) (internal citation omitted). The court’s responsibility is to make “a reasonable determination of appropriate restitution,” and to do so by “resolving uncertainties with a view towards achieving fairness to the victim[s].” *Id.* Restitution shall also be ordered “in the full amount of each victim’s losses ... without consideration of the economic circumstances of the defendant.” 18 U.S.C. § 3664(f)(1)(A). The fact that a member of a conspiracy received “a smaller share of the swindled funds” does not preclude holding such a member liable for the full amount of restitution. *See*

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<sup>1</sup> In the parties’ plea agreement, the government also agreed to submit a restoration request to the Money Laundering and Asset Recovery Section of the Department of Justice, seeking approval of any assets forfeited by Padilla be restored back to victims in this case. This might, in turn, ultimately satisfy nearly all of Padilla’s restitution obligations, as the government’s restitution request is only slightly more than Padilla’s forfeiture obligation. *See* Dkt. #136 at 5-6.

*United States v. Ochoa*, 58 F.4th 556, 558, 561, 563 (1st Cir. 2023), *cert. denied*, 2023 WL 6378456 (U.S. Oct. 2, 2023) (upholding full restitution order against conspiracy member).

The Court, however, can also decline to award restitution under the MVRA when either the “number of identifiable victims is so large as to make restitution impracticable,” or “complex issues of fact related to the cause or amount of the victim’s losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.” 18 U.S.C. § 3663A(c)(3).

### **RESTITUTION METHODOLOGY & REQUEST**

Calculating restitution in pump-and-dump cases is a complex endeavor under ordinary circumstances, but even more challenging in this case due to the short-squeeze dynamic that was at play in both ONPH and FPWM. At the time of the pump-and-dump trading that Padilla facilitated, a “short squeeze” dynamic was playing out in the public markets, and a portion of ONPH’s and FPWM’s price appreciation was likely due to a short squeeze dynamic. As discussed in the Presentence Investigation Report (¶¶ 31-32, 42), just before Padilla started directing the dump of ONPH shares, a high-profile short squeeze took place involving the company Gamestop Corp., which famously rose from under \$20 per share to over \$350 per share in part because of retail investors’ effort to take advantage of—*i.e.*, squeeze—institutional investors who held significant short positions in the stock. The government’s investigation in this matter resulted in evidence that a sophisticated market maker in ONPH and FPWM stock believed, based on his experience, that *part* of ONPH’s (and, to a lesser extent, FPWM’s) price appreciation was due to a short squeeze.

Given this dynamic, the government undertook an effort to identify victims who traded during the relevant time period for each of ONPH and FPWM but who did not trade in either stock for the sole or primary purpose of participating in a short squeeze. Given this qualitative limitation, the government was unable to simply rely on Bluesheets trading data obtained from the U.S. Securities &

Exchange Commission (“SEC”) to identify victims who traded during the relevant periods and to calculate their associated losses (as it has done in other matters). *Cf. United States v. Knox*, 18-10385-NMG, Dkt. #269 (explaining government’s restitution methodology using Bluesheets trading data to identify over \$58 million in restitution for over 8,000 victims in pump-and-dump case). Rather, the government took the following steps to identify victims and to calculate their trading losses.

First, on October 25, 2023, pursuant to the Court’s order permitting alternative victim notification (Dkt. #152), the government published a press release inviting potential victims to reach out to the U.S. Attorney’s Office and to submit relevant materials reflecting their trading in ONPH and FPWM.<sup>2</sup> Ultimately, approximately 35 individuals responded to the government’s solicitation.

In addition, to identify and solicit submissions from potential victims with the largest losses, the government used Bluesheet trading data from the SEC to identify potential victims with potential losses over approximately \$90,000 (approximately 50 individuals). The Federal Bureau of Investigation then used proprietary databases to identify telephone numbers for those individuals and attempted to reach each one. Ultimately, the FBI received calls back from and/or otherwise made contact with approximately 17 such individuals.

For each of the above-described individuals with whom the government made contact, the government (i) requested brokerage statements reflecting the individual’s purchases and sales of ONPH and/or FPWM, as well as a recent brokerage statement reflecting their current holdings of ONPH and/or FPWM, if applicable; and (ii) inquired with each individual, where appropriate,

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<sup>2</sup> The press release is available here: <https://www.justice.gov/usao-ma/pr/notice-potential-victims-securities-fraud-case-involving-stocks-onph-fpwm>.

what caused them to purchase ONPH and/or FPWM and whether they purchased either stock in order to participate in a short squeeze.<sup>3</sup>

A forensic accountant with the FBI then used the trading information provided by the victims and the Bluesheet trading data from the SEC to identify each individual's losses, if any, during the relevant periods (*i.e.*, the Relevant ONPH Period and the Relevant FPWM Period, identified above). To do so, the forensic accountant identified the cost of the shares purchased during the relevant period (plus any associated trading fees, if known) and then subtracted the value of the shares later sold (whether sold during the relevant period or later). For shares that were never sold and are still held to this day, the forensic accountant calculated a 100% loss based on the original cost of the shares purchased given that neither ONPH shares nor FPWM shares have any value today.<sup>4</sup> Finally, for individuals who failed, in whole or in part, to provide trading records but otherwise met the qualifications to be a victim based on the government's interview of the individual, the government used the trading data in the Bluesheets to calculate their losses. For individuals who still held shares as of the end of the period covered in the Bluesheets data, or when certain sales information was lacking, the government used the highest price of the stock following

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<sup>3</sup> A number of the victims with whom the government spoke were elderly and/or the widow of the individual (now deceased) who placed the trades. In certain cases, the short-squeeze question was not asked where the individual had trouble following the interviewee's questions, presented as lacking stock-trading sophistication, and/or was not in a position to know the trader's intent (*e.g.*, a widow). In addition, a small number of victims reported that their trades were placed by third-parties with discretion over their account; in those cases, the government similarly did not inquire as to whether the victim intended to participate in a short-squeeze.

<sup>4</sup> Yahoo Finance reports that, as of today, ONPH is trading at \$0.0000 and FPWM is trading at \$0.0007.

the end of the period for which Bluesheets trading data was available to calculate the individual's loss on shares still held.<sup>5</sup>

Based on the methodology described above, the government identified 33 victims with losses totaling \$3,163,827.91. These victims and their associated losses are identified by their Victim Notification System numbers in Exhibit A, attached hereto, which is supported by a declaration from the forensic accountant who prepared the schedule, attached hereto at Exhibit B. The government has also produced to defense counsel the worksheets associated with each individual victim and is prepared to file them with the Court under seal as needed should the defendant challenge any of the calculations.

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<sup>5</sup> This approach possibly understates these victims' losses by a small amount, depending on whether and when they later sold their shares, but is the most conservative approach to calculate loss in the absence of reviewing the victims' brokerage records.

### CONCLUSION

For the reasons discussed above, the government respectfully moves that the Court order restitution in the amount of \$3,163,827.91 to be awarded to 33 victims, as identified in Exhibit A. The government also moves that the Court enter an amended judgment reflecting the restitution as ordered. The government also proposes, however, that defense counsel be provided 21 days to review the materials produced by the government contemporaneous with this motion in order to provide the defendant's position.

Respectfully submitted,

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Date: March 15, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and copies will be sent to those indicated as non-registered participants.

/s/ James R. Drabick

James R. Drabick

Assistant United States Attorney

Dated: March 15, 2024