Case No. 14-16733

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION

Plaintiff, Appellee

vs.

LYNDON, et al

Defendant, Appellant

APPELLANT'S REPLY TO APPELLEE'S BRIEF

Appeal from Final Judgments of the
U.S. District Court for the District of Hawaii
Hon. Susan Mollway, Presiding
(USDC Case No. CV13-00486 SOM-KSC)

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I. **Cases**

The SEC has misrepresented the context of the following cases:

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DECLARATION OF TROY LYNDON

Because of my lack of legal expertise, should the court find my arguments compelling, but my pleading(s) lacking any technical insufficiency, I humbly request this court provide me with the opportunity to answer or cure such insufficiency.

Although references herein to "Lyndon" are in third-person, I request that this Court recognize any statements herein as part of my testimony and declaration under penalty of perjury – such that it may be referenced in a decision accordingly.

/s/ Troy Lyndon

INTRODUCTION

As disclosed herein, the SEC's Appellee Brief filed on June 1, 2015 includes rampant misrepresentations of fact, case law and citations from the record. Herein, only a portion of such misrepresentations are explained due to document length restrictions. Accordingly, it would be a gross error for this appellate court to use any SEC statement or citation as an authority without validating contextual accuracy.

Among other things, the SEC's financial judgment was granted by a court in error for failing to consider the impossibility of reconciling the SEC's fabricated financial records of bank deposits to the audited financials of the company prepared by an auditor licensed by the SEC.

In SEC's Appellee Brief, SEC attempts to reframe the standard of review as presented in Lyndon's Appellant Brief by brushing aside issues with the ease of a Harry Potter magic wand, in the supposed name of justice, positioned as law enforcers seeking to make a targeted defendant pay for sins they have alleged, but in consideration of facts submitted into the record by Lyndon, could never be proven at trial.

Lyndon's Appellant Brief contains important constitutional issues which demand a verdict, as no constitutional basis or case law exists to empower SEC to fabricate financial claims while ignoring, hiding and omitting "actual", audited financial data.

SEC's misconduct combined with the court's multiple errors contributing to the court's orders in this case cannot be brushed away as harmless.

ARGUMENT

I. THE SEC HAS ENGAGED IN AN OVERWHELMING NUMBER OF FACTUAL MISREPRESENTATIONS TO THE COURTS.

In this case, SEC's litigation style has been to bombard the court with so many misrepresentations while supporting their assertions with assurances, such that judges have made decisions without a proper review of facts. Including SEC's Appellee Brief, four types of misrepresentations exist:

A. SEC seeks to criminalize Lyndon. This case never went to trial. SEC entered into a no-admit, no-deny settlement with Lyndon. Thereafter, SEC sought to present him before the court as a criminal by including allegations from SEC's original complaint in Appellee's Brief ad nauseam. All such accusations are not before this court.

B. SEC misrepresents Lyndon's disclosures. Lyndon's disclosures to the court were in answer to SEC's breach of the parties' settlement agreement. Lyndon's disclosures were intended to provide the court with proper context of the parties' relationship and facts leading up to the case – some of such evidence brought into doubt the validity of SEC's original allegations. Lyndon's disclosures were intended to reveal SEC's pattern of behavior -- misrepresenting facts and evidence. In SEC's Appellee's Brief, SEC presents Lyndon as an unwilling participant in the settlement and the sole

violator of the agreement – which is farthest from the truth. The facts in this case show that until SEC had initially breached the settlement agreement, through their unilateral definition change of "ill-gotten" gains, Lyndon had honored the settlement agreement whole-heartedly by resigning from the company at great expense. Accordingly, the terms "Lyndon agreed", "Lyndon further agreed", etc. as stated in SEC's Appellee Brief, always fail to point out that Lyndon's disclosures took place after SEC's violation of the parties' settlement agreement. And the court erred by failing to enforce the parties' settlement agreement.

Had the SEC properly sought a financial claim based upon the "actual", audited financials, Lyndon never would have filed a single disclosure. Lyndon's disclosures were only intended to expose SEC's behavior of misrepresentations and violation of the parties' agreement.

C. SEC intentionally misrepresents case-law and federal rules of procedure as follows:

1. Regarding the Brady issue: In *Brady v. Maryland*, 373 U.S. 83 (1963), SEC invokes 2 cases to say "*Brady does not apply in civil actions*" – a gross misstatement of fact. In *SEC v. Neil*, there are no comparable facts to this case because Neil (i) provided no evidence that the discovery he sought from informal notes was exculpatory, (ii) makes no claim that SEC fabricated evidence, and (iii) had no dispute with any financial claim. Further, Judge Alsup in denying Neil's discovery request allowed Neil to resubmit discovery requests in the event each witness did not recall material parts of their statements.

   In presenting *SEC v. Pentagon Capital Mgmt*, SEC failed to mention at *3, Judge Sweet stated he need not apply Brady to the material the defendants

sought, as they already received those materials through ordinary civil discovery. Quite contrary to SEC's intended use of this case-law citation, at *6 n.2, the issue of whether Brady applied to civil proceedings remained an "open question".

The SEC's hidden evidence in this case included the company's audit file, auditors' work papers, and auditor testimony at minimum – such information represents exculpatory evidence because details of audited financials support the company's financials as filed with SEC in the public domain years ago at http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000013055 (hereinafter referred to as the "SEC Link").

2. Regarding Jurisdiction of Lyndon's Rule 60(b)(2) motion:

In SEC's citation of FED. R. App. Proc. 12.1, Adv. Comm. Notes, citing *TAAG Linhas Aereas de Angola v. Transamerica Airlines, Inc.*, SEC misrepresents the reason for the note as stated therein, "*Appellate Rule 12.1 applies only when those rules deprive the district court of authority to grant relief without appellate permission."* In this case, the district court was not deprived. This Appellate Court indicated a willingness to grant a remand if the district court indicated a willingness to grant Lyndon relief, but the district court's denial of Lyndon's request clarifies this as a non-issue. Accordingly, Lyndon could not appeal a motion that was not provided a hearing, so no 60-day clock started ticking (i.e. SEC's Fed. R. App. Proc. 4(a)(1)(B); *US v. Sadler*).

However, before the district court denied Lyndon's motion requesting a hearing of his Rule 60(b)(2) motion (Dkt 187), the court did request SEC to provide its Opposition (Dkt 192), and Lyndon to provide a Reply (Dkt 193). The

court thereafter asked for clarification from Lyndon regarding the audit file (Dkt 194). Lyndon responded in Dkt 195. In the court's order (Dkt 197), any reasonable person can see that Judge Mollway ignored Lyndon's Reply to SEC's opposition, and his response regarding the audit file because Judge Mollway misrepresented the availability of the electronic files - failing to acknowledge, as stated in Dkt 193, page 3, line 16, they were available in the public domain at *http://www.leftbehindgames.com/QuickBooks.html* (hereinafter referred to as the "Lyndon Link"). Judge Mollway also failed to comment on issues raised in Lyndon's Reply including evidence of perjury committed by SEC staff, and failed to comment on Lyndon's response to her question about the audit file (Dkt 195).

It is within this Appellate Court's jurisdiction to recognize the court's error is making these misrepresentations which resulted in the court's denial to 'hear' Lyndon's Rule 60(b)(2) motion. The record shows that the court erred by misrepresenting facts and by erred in judgment.

3. Regarding Rule 60(c)(1) timeliness of new evidence: SEC does not dispute the fact that the financial judgment of August 11, 2014 was within one year. However, the SEC attempts to relieve the original consent judgment (settlement agreement) from this court's right to reverse it on appeal by stating that it had been signed more than one year prior to November 25, 2014. But SEC fails to mention Lyndon's argument - that he could never have predicted SEC's violation of the parties' settlement agreement when it was signed. And accordingly, the year should be calculated from Lyndon's first formalized motion and disclosure to the court regarding SEC's violation in Dkt 28 on

December 20, 2013, which was less than one year earlier.

If this court fails to rule in this manner, and fails to recognize the settlement agreement's need for enforcement based upon "contract law", the SEC would be further empowered to obtain judgments which could never be overturned even if they commit fraud or fail to honor their obligations therein after one year were to pass from the date of such settlement.

4. Regarding Rule 60(b)(2) evidence: Although SEC may have properly quoted *Feature Realty, Inc. v. City of Spokane*, *Coastal Transfer Co v. Toyota Motor Sales, USA, Inc. and Frederick S. Wyle P.C. v. Texaco, Inc.*, SEC misrepresents Lyndon's Rule 60(b)(2) evidence with new arguments from when they opposed the motion in Dkt 192, which Lyndon Replied to in Dkt 193. The SEC provided the court with no evidence contrary to Lyndon's declaration and evidence, other than hearsay. The court's decision did not cite any legal citation or authority to contradict Lyndon's position, only a naked opinion.
5. Regarding Discovery Issue: Although SEC may have properly quoted *Hallett v. Morgan*, SEC ignores Lyndon's Appellant Brief's restatement of evidence in subpoenas sent to SEC to attain discovery specific to financial documents relating to the company. Clearly the court erred by not recognizing such financial data as relevant to the calculation of potential disgorgement.
6. Regarding SEC's proposed Standard of Review: In attempting to manipulate this appellate court's standard of review, SEC presents five cases out-of-context. In *Turtle Island Restoration Network v. United States Dep't of Commerce*, Judge Mollway's determination that plaintiff failed to show the government's actions

as an "abuse of discretion" was based upon the evidence presented by plaintiff, and has no similarities to this case. The SEC incorrectly compared a plaintiff's accusation of a defendant to Lyndon's accusation that the court erred in abusing its discretion.

In *Retail Clerks Union Joint Pension Trust v. Freedom Food Ctr., Inc.*, SEC presents a case in which a stipulated judgment is entered into by a signer who is not an attorney who later attempts to use this fact to back-out of the judgment – it has no relation to this case involving the SEC because (i) no factual dispute existed regarding obligations in the judgment (i.e. "discovery"), (ii) no allegations of SEC fraud, (iii) no dispute regarding disgorgement calculations existed; and (iv) the parties' disputed judgment did not require, as does this case, any enforcement based upon "contract law".

In *SEC v. Citigroup Global Mkts.*, both parties wanted the court to bless their settlement agreement. (i) No dispute existed between the parties, (ii) the litigation had nothing to do with a consent judgment already in force, (iii) Judge Rakoff felt their proposed deal was not in the best interest of the public and he therefore ordered the parties to trial, (iv) both parties' jointly appealed Judge Rakoff's decision which was overturned by the appellate court – clearly this case-law citation has no similarities to Lyndon in this case, considering it has (v) no disputes of "discovery" and (vi) no fabrication of a false financial claim, etc. However, what is relevant is Judge Rakoff's last words after resolving the case after remand, "*Indeed, the Court of Appeals invites the SEC to avoid even the extremely modest review it leaves to the district court by proceeding on a*

solely administrative basis…One might wonder: From where does the constitutional warrant for such unchecked and unbalanced administrative power derive?"

In *SEC v. First Pac. Bancorp*, after a bench trial, it was determined that CEO Sands simply failed to complete a $1.5MM public offering because the checks provided bounced. Sands was ordered to pay disgorgement equal to the amount not returned to the investors, plus pre-judgment interest, because "scienter" was obvious because the offering simply did not meet the minimum requirements. SEC cited this case without any reasonable comparison to Lyndon's no-admit, no-deny settlement because (i) the court did not find Lyndon guilty after a trial and (ii) because had SEC used "actual" accounting records, rather than fabricate their own claim, the court would have seen that no funds were paid to Lyndon that could be categorized as "ill-gotten" without committing fraud against Lyndon, as they did.

In *SEC v. Platforms Wireless Int'l Corp.*, although the parties entered into a Rule 54(b) judgment, SEC misrepresents such case by failing to disclose that (i) no dispute existed regarding SEC's failure to provide "discovery" for the proper calculation of disgorgement, (ii) no argument was made that the court failed to enforce the settlement based upon "contract law", (iii) no dispute existed claiming SEC had fabricated a claim, and (iv) no dispute existed that the SEC used unqualified personnel to contradict audited financials.

In *SEC v. First City Fin. Corp.*, after a trial, the court found defendants guilty of failing to report stock holdings within the 10-day requirement in SEC

Rule 13(d) as part of an attempted hostile takeover of Ashland Oil. This case citation has no comparable facts to SEC's case against Lyndon, as the ordered disgorgement was based upon facts the court determined after performing diligence (reviewing "actual" stock issuances and dates) during trial. Such case-law did not involve (i) a settlement agreement, (ii) a dispute regarding SEC's "discovery" obligation; (iii) a need for enforcement based upon "contract law", (iv) a dispute regarding transactions, and (v) a dispute about a fabricated financial claim, etc…

In *SEC v. JT Wallenbrock & Assocs.*, the parties entered into a Rule 54(b) consent judgment also, but SEC fails to disclose that (i) defendants had no dispute similar to Lyndon relating to SEC's obligation to provide "discovery", (ii) the need for enforcement of their settlement based upon "contract law", (iii) no dispute regarding source documents used by SEC to fabricate their financial claim; (iv) defendants, unlike Lyndon, did not disagree with the majority of SEC's disgorgement calculation. This case between SEC and Lyndon is also incomparable because (v) "actual" financial records of the company, its audit file, and auditor work papers, <u>show no trail of relevant monies paid to Lyndon at all</u> – a fact inconsistent with SEC's original allegations, whereas (vi) SEC chose to fabricate 100% of its categorizations of company monies attributing them to Lyndon personally in a declaration by unqualified staff – (vii) including unrelated corporation accounts as admitted by SEC's Ms. Shau (Dkt 68, page 1, lines 25-27 and page 2, lines 10-16), and no comparison exists regarding Lyndon's disclosures in Dkt 103, page 4, lines 2-23, relating to (viii) defendant's

control of the company or its finances, (ix) Lyndon was one bank signer of several, and (x) he did NOT control the company as just one of three directors.

7. Regarding Lyndon's Right to Speak Up: Although SEC may have properly quoted *SEC v. Adair, citing United States v. Harris, SEC v. AMX Int'l Inc.*, *Siris v. SEC*, *SEC. v. Universal Express, Inc.*, and *SEC v. Fox*, SEC fails to recognize that (i) the parties' settlement agreement did not require Lyndon to stay silent in the event SEC misrepresented facts unknowable at the time, and (ii) the parties' settlement agreement did not require Lyndon to stay silent while the SEC submitted a financial claim without any reference to "actual", audited financials. SEC further does not provide proper context by failing to recognize that Lyndon never would have appealed the settlement agreement (consent judgment) (iii) if SEC had acted honorably, providing "discovery" as obligated under the parties' settlement, (iv) if SEC had not refused to provide such "discovery" ignoring 4 subpoenas, (v) if SEC had not opposed Lyndon's Motion to Compel SEC provide "discovery", (vi) if SEC had used "actual" financial records to submit a financial claim, (vii) if SEC had not hidden exculpatory evidence of the audit file, auditors' work papers and auditors' testimony, (viii) if SEC had not misrepresented facts in the record; and (ix) if SEC had not attempted to keep Lyndon's evidence out of the record, resorting to perjury to do so.

D. The SEC continually misrepresents the court docket record as follows:

1. Considering the vast amount of statements within Appellee's Brief, should any statement therein have not been commented on herein, such does not

necessarily represent any concession, agreement or acceptance that such statement(s) are true.

2. On page 6, SEC discusses the amount of a judgment they were awarded in their case against co-defendant Zaucha. Here, SEC fails to inform the court that although previously represented, Zaucha was unrepresented at the time. Also, the SEC's judgment against Zaucha is not an issue before this court.
3. On page 12, SEC presents Judge Mollway's normal process her "inclination" out-of-context as the record shows she came to her inclination without regard for Lyndon's arguments and evidence – evidenced by her misrepresentation of the facts as detailed in Lyndon's Appellant Brief.
4. On page 12, SEC states, "*the court barred Lyndon from filing any new motions*". Here, SEC presents out-of-context again. The record shows that the court allowed <u>every</u> timely-filed document by Lyndon into the record.
5. On page 13, SEC present's Lyndon's motion for Judge Mollway's recusal out-of-context by attempting to present Judge Kobayashi's comment that, "*he (Lyndon) was permitted to speak at length, without criticism or interruption*". These comments by Judge Kobayashi did not address the court's failures to hear Lyndon's numerous motions, which were ignored on the scheduled court date on 6/30/14. The court's denial of Lyndon's request to recuse Judge Mollway is not before this court. However, it is worth noting that Judge Kobayashi indicated that Lyndon's arguments could be relevant on "appeal".
6. On page 13, SEC states, "*The court found that the Commission met 'its burden of demonstrating that $3,251,169 is a reasonable approximation of*

Lyndon's illicit gains based on the violations of various securities laws". Here, SEC fails to mention that the court erred by relieving itself of performing any due-diligence.

7. On page 13, SEC states, "*[h]is (Lyndon) opposition to the motion and arguments at the hearing cast no doubt on that figure*" is also presented out-of-context, as Lyndon did, in fact, cast significant doubt on any figure many times, as explained in Lyndon's Appellant Brief with proper references.
8. On page 14, SEC states that *Lyndon perpetrated fraud by having people invest about $4.6 million into a company that was not financial solvent.* Here, SEC considered the company "insolvent" during this same time from 2009-2011, when the company expanded its product line from 4 to 11 products.
9. On page 14, SEC states that Judge Mollway said that Lyndon had provided '*no reason for this court to reconsider*' its order, and the court reiterated that Lyndon's arguments amounted to *nothing more than a collateral attack on the underlying consent* -- with nothing but a naked opinion unsupported by any case-law or authority citation, without any discussion of Lyndon's arguments and evidence.
10. On page 15, SEC's title for point 6 was, "*During this appeal, Lyndon moved in the district court to vacate the judgment on the basis of supposedly new evidence.*" Here, the SEC uses the word "*supposedly*" to describe Lyndon's arguments and evidence, which they opposed with nothing more than hearsay while the court's order was a naked opinion unsupported by any case-law or authority citation.

11. On page 17, SEC attempts to say that *disgorgement, prejudgment interest, and a penalty were based not on "if" but "how much".* SEC presents this out-of-context, because clearly, the intent was for the parties to take discovery and determine genuine "ill-gotten gains" on monies wrongfully paid or received by Lyndon – nothing more.
12. On page 17, SEC misrepresents facts again by stating "*The Commission adhered to the consent judgment*" when the record reveals A) SEC refused to provide "discovery" per settlement agreement, and B) SEC did not base "how much" disgorgement on "actual" accounting records, while hiding the audit file and auditors' work papers in their possession. The record shows that the SEC fabricated records and submitted them to the court with the full knowledge they were contrary to the auditors' financial records and company's audited accounting records.
13. On page 17, SEC states, "*the only party who has violated the consent judgment is Lyndon*" – again, SEC tries to eliminate any focus on their misrepresentations and breach of the settlement agreement because they know full well that they refused to provide Lyndon with the "discovery" he requested in several subpoenas – and had SEC not violated the agreement in numerous ways, Lyndon would never have made disclosures.
14. On page 18, SEC misrepresents the truth by stating that "*Lyndon did not present any rebuttal evidence*" regarding SEC's financial claim. Apparently the SEC has not read Lyndon's Appellant Brief with more than a hundred footnote citations from the record supporting his numerous rebuttals.

15. On page 18, SEC misrepresents the facts about the evidence presented to the court by Lyndon stating that he "*had access to his own company's records*" and fails to acknowledge that SEC's opposition Dkt 192 provided for no evidence contrary to the facts presented by Lyndon as he pointed out in Dkt 193. The court's decision was a naked opinion made without any cited case-law or legal authority. In fact, Judge Mollway misrepresented the fact that the electronic files evidence were present by omitting the fact that such were in the public domain (See Lyndon Link).
16. On page 18, SEC actually states *that even if the evidence was newly discovered, it would not have affected the final judgment because it has no bearing on the calculation of Lyndon's "ill-gotten" gains*. Here, SEC omits their possession of the audit file and auditors' work papers, and also indicates that the company's accurate accounting records supported with licensed auditor representations is, in their eyes (of the government), unimportant in the calculation of 'ill-gotten' gains. Here, SEC indicates that only monies they determine, in their sole discretion without oversight, shall be considered "ill-gotten" gains, an assertion that has no constitutional basis.
17. On page 20, SEC states, "*the Commission complied with its discovery obligations when it produced over 20,000 pages of material relevant to the remedies proceeding*". Here, SEC fails to remind the court that they fabricated the categorization of company expenditures to make them all, 100% of them, "personal" to Lyndon. The SEC is silent in their Appellee Brief with regard to their possession of the audit file, and hidden auditor

work papers and testimony as well as all other financial documents collected during their 2.5 year investigation of the company as reference by Lyndon in the parties' Rule 26 Joint Report (Dkt 75). As stated in Lyndon's Appellant Brief, SEC ignored 4 federal subpoenas and in fact, fought against numerous motions to compel discovery as Lyndon simply sought the court's help to enforce the settlement agreement which required SEC to provide such discovery.

18. On page 20, SEC states, "*the district court properly denied his motion because it agreed with the Commission that the material Lyndon sought was irrelevant to the only issues left in the case – the disgorgement and penalty amounts."* At the time, the court had no knowledge the SEC had taken the testimony of the company auditors and had possession of the audit file and auditors' work papers detailing the company's financial records. This was only discovered after the court granted SEC its financial judgment. Further, the SEC omits Lyndon's numerous arguments and evidence relating to such in his Appellant Brief.
19. On page 21, SEC states *Lyndon had ample opportunity to argue that he wasn't afforded the chance to assemble and present evidence regarding disgorgement.* Here, SEC omits their failure to provide "discovery", which Lyndon was counting on to provide the court with an estimation based upon "actual" records. Lyndon's knowledge that he did not take any "ill-gotten" gains remain consistent with the company's audited financials filed with SEC and in the public domain from 2009 to present, which are supported by the

licensed auditors' file and work papers still in SEC's possession.

20. On page 23, SEC implies that $3,215,169 from Zaucha to company represented illegal kick-backs, despite auditor testimony that monies from Zaucha did not necessarily represent an illegal act as shown with evidence and argued in Lyndon's Appellant Brief.
21. On page 23, SEC states, "*the Commission satisfied its burden of presenting a reasonable approximately of the ill-gotten gain*". Here, SEC believes it had no legal obligation to insure that its financial claim was actually based upon "ill-gotten" gains – and in fact, confirms their belief that totaling up bank deposits represents their entire burden to reasonably approximate an "ill-gotten" gain.
22. On page 23, SEC states that Lyndon does not explain how the court abused its discretion in making this finding. Apparently, SEC has not read Lyndon's Appellant Brief in which Lyndon describes numerous errors made as a result of the court's abuse of discretion.
23. On page 23, and throughout Appellee's brief, SEC continues to fail to acknowledge their own deception of entering into a no-admit, no-deny settlement with special language intended to 'change' the clear definition of "ill-gotten" gain to mean something that factually has no supporting evidence whatsoever as "ill-gotten", even in the face of "actual" accounting files, including the company's audit file and auditors' work papers, all of which contradict the SEC's position and prove that Lyndon never received any ill-gotten gains, just as do the company's audited financials in the public domain

(i.e. SEC Link and Lyndon Link).

24. On page 24, SEC states, "*While Lyndon offers no details on those expenses*", the SEC and the court fail acknowledge the company's audited financials, available in the public domain, are the definitive authority on the company's finances (see SEC Link and Lyndon Link).

25. On page 25, SEC states, "*Lyndon does not object to the imposition of prejudgment interest*" without referencing Lyndon's notice of appeal, which clearly indicates his appeal is for the entire judgment.

26. On page 25, SEC referring to Lyndon's discovery production stated, "*Lyndon, by contrast, produced nothing.*" Here, SEC misrepresents the tens of thousands of documents provided to it by Lyndon during their 2.5 year investigation, as well as the company's audited financials available in the public domain and Lyndon's attempts to cause the auditors to provide the SEC with the audit file, which Lyndon did not know was already in the SEC's possession because of SEC's intentional omissions.

27. On page 26, SEC states, "*Lyndon's accusations about withheld documents are baseless*" and on page 27, "*the Commission disclosed in the source of ordinary discovery all the materials it had that were relevant to the calculation of the disgorgement amount*". We know from the court records as exposed in Lyndon's Appellant Brief, that the SEC hid and withheld possession of the audit file, auditors' work papers, auditors' testimony, etc.

28. On page 27, SEC states, "*Lyndon has not demonstrated that the district court erred when it refused to compel production of irrelevant material.*" This

deceptive statement does not address specific 'relevant' material including the company's documents requested in subpoenas, which the SEC misrepresented and the court accepted, resulting in error.

29. On page 28, SEC's references to Judge Chang and Judge Mollway's involvement in the denial of Lyndon's Motion to Compels are deceptive – failing to address references to facts as presented in Lyndon's Appellant Brief.
30. On page 28, SEC states that Lyndon's opposition to the Commission's request for disgorgement did not include evidence intentionally excluded Lyndon's Joint 26 Report position (Dkt 75) regarding evidence.
31. On page 29, SEC states the hearing lasted 66 minutes, but fails to clarify that 100% of the time was devoted entirely to SEC's Motion for Summary Judgment. The record shows in the court transcript (ECF 138) that none of Lyndon's Motions scheduled on that day were brought up as a topic, including his Conforming Motion for Permanent Stay (ECF 101), Motion for Sanctions (ECF 81) and Motion to Compel SEC provide discovery (ECF 76), all of which should have been heard before determining the final judgment.
32. On page 29 and 30, SEC misrepresents Lyndon's Motion for Recusal, a matter not before this court. However, the points brought up by Lyndon in such motion are relevant to the court's prejudice.
33. In pages 30-32, SEC attempts to make the argument that Lyndon's evidence in his Rule 60(b)(2)is not justiciable. The record shows that SEC's arguments are nothing more than hearsay. In their Opposition (Dkt 192), the SEC provided the court with no evidence contrary to Lyndon's declarations and

evidence. The record also shows that the court came to its decision with nothing more than a naked opinion without any reference to a legal citation or authority. More detail is provided below in Argument IV and in relevant case-law in Argument I(C)(2) and I(C)(4) herein above.

34. On page 31, when SEC recounts the district court's decision regarding Lyndon's Rule 60(b)(2), the court's comment that it would not "*do anything other than cause delay*", SEC also fails to acknowledge that Judge Mollway misrepresented Lyndon's evidence, as she had done so before, by stating that electronic records were not included while failing to acknowledge the web link therein - evidence that such was in the public domain (Dkt 193, page 3, line 16) – referred to herein as the Lyndon Link.

35. On page 32, SEC continues to make arguments to try and keep Lyndon's Rule 60(b)(2) pleadings out of the record, saying that Lyndon's attempts are "*misguided because there is nothing for this Court to review and nothing for this Court to decide."* Apparently, the SEC has not read Lyndon's Appellant Brief wherein numerous facts contrary to SEC's argument are supported with facts from the record.

36. In pages 33-35, SEC attempts again to provide more hearsay regarding Lyndon's Rule 60(b)(2), not offering any new evidence contrary to Lyndon's declarations and evidence in his Rule 60(b)(2) motions. The SEC's statements further clarify the SEC's opinion that "actual" financial records would not change the disposition of the case involving the calculation of "ill-gotten" gains – clarifying how the SEC's use of the term "ill-gotten" is and

was intentionally deceptive in the parties' settlement agreement.

37. In pages 36-37, SEC makes numerous false claims regarding Lyndon's presented General Ledger of the company, stating that such does not "*contradict the exhibits accompanying the Commission's motion*". Any reasonable professional can, if they care to, compare the transactions of SEC's fabricated records (during the same time-frame) with the transactions from the company's General Ledger (Appendix A of Appellant Brief) or from the audited financials in the public domain, and find them incomparable, and completely inadequate. The General Ledger was used to create the company's audited financials published by SEC and in the public domain (see SEC Link above).

    Further, any reasonable professional can, if they care to, compare the transactions of SEC's fabricated records (during the same time-frame) with the transactions pertaining to monies paid directly to Lyndon (Appendix B of Appellant Brief) and find them incomparable, and completely inadequate.

38. On page 37, SEC states that Lyndon did not appeal "*the district court's imposition of a third-tier penalty*" without making reference to Lyndon's original notice of appeal, where he clearly indicated his appeal from the entire judgment.

39. On pages 37 and 38 in their final words, SEC states that the emails submitted by Lyndon in his Rule 60(b)(2) pleadings "*could be considered relevant to his liability for making misleading statements in filings with the Commission, but he agreed in the consent that his liability would be assumed for purposes*

of determining disgorgement." Here, SEC attempts to indicate such emails could cause Lyndon any form of liability when in fact, if any reasonable person cared to review them, such emails referenced in Lyndon's Rule 60(b)(2) pleadings (Exhibit BC, Dkt 174) provide proof positive that every company quarterly and annual filing was first approved by an SEC licensed auditor and attorney before it was filed. Such emails are NOT a liability to Lyndon. Here, in SEC's last sentence, the SEC attempts to reference the consent judgement (settlement agreement), stating that "*his (Lyndon) liability would be assumed for purposes of determining disgorgement*" again misrepresenting the fact that no language within the consent judgment referred to a specific liability or dollar amount, which would only be determined after "discovery". And accordingly, any reasonable person can see clearly that the company's "actual" accounting data is irreconcilable with SEC's fabricated documents with no basis of fact, contradicting publicly available audited financials. No qualified forensic accountant has ever provided an opinion to the court – only an unqualified SEC staff accountant.

40. Although Lyndon is still learning about the rules in brief writing, he had thought that new arguments not already in-the-record cannot be brought up in either his Appellant Brief or the Appellee's Brief. If he is correct, then many of SEC's arguments in their Appellee Brief violate this rule.

II. THE SEC ATTEMPTS TO RESTATE THE ISSUES OF LYNDON'S APPEAL BY REMOVING LYNDON'S PRIMARY REQUESTS FOR THE COURT TO DETERMINE THE CONSTITUTIONAL BASIS FOR ITS ACTIONS

The SEC created a substandard 2-pronged "statement of issues" in their Appellee Brief. In so doing, SEC seeks to remove important issues from Lyndon's Appellant Brief, issues demanding answers. The following issues as summarized from Lyndon's Appellant Brief are as follows:

A. What is the court's constitutional basis by which SEC, after entering into a no-admit, no-deny settlement agreement with Lyndon, can intentionally withhold "discovery" from Lyndon and present a false claim with underlying evidence that was fraudulent to wrongfully receive a financial judgment for ≈$3.7 million dollars?
B. What is the court's constitutional basis by which SEC can intentionally pursue a financial judgment against a defendant it knows, based upon hidden audit work papers and testimony, has never taken any "ill-gotten" gains?
C. What is the court's constitutional basis that enables SEC to pursue its desired end, to win a financial judgment, by using any necessary corrupt means to achieve it, without any consequence whatsoever?
D. What is the court's constitutional basis which relieves SEC from providing Lyndon with a legal defense when it has publicly stated that Lyndon committed fraud, a criminal act? Doesn't the government have a legal obligation to defend Lyndon whether in any case in which it publicly accuses a defendant of a criminal act?
E. What is the court's constitutional basis which grants SEC and its staff with immunity from consequences resulting from lies, deceit, cover-ups, misrepresentations and outright fraud in presentations to the court in this case against Lyndon?
F. What is the court's constitutional basis of law which grants SEC the power to

maliciously prosecute an innocent defendant without any consequence? Lyndon's Appellant Brief includes many sub-issues relating hereto.

III. THE SEC INVENTS NEW MISREPRESENTATIONS INTENDED TO DECEIVE THIS COURT

The parties' settlement agreement never had a "remedy" phase as described in the SEC Appellee's Brief. In fact, the word "remedy" or "remedies" is to be found nowhere in the settlement consent judgment. Nevertheless, SEC commits fraud again by misrepresenting the parties' settlement to the court by using this contrived term 29 times in their Appellee Brief with the intent to sway the court to believe that the execution of the agreement, was a separate 'phase' from a later remedy phase which never existed. There is no doubt the SEC attempts to frame the settlement in this way so that their violation of the "discovery" clause could not be grounds to make the agreement null and void, because "discovery" was never intended to be a separate section or phase therein. The agreement either holds entirely, or it doesn't. There is no provision to enable the SEC to violate one part of the agreement without impacting the rest of the agreement.

IV. THE SEC'S NEW MISREPRESENTATIONS ATTEMPTS TO KEEP THE COMPANY'S ACCOUNTING RECORDS OUT OF THE RECORD

On page 2, SEC's Appellee Brief states, "*On January 31, 2015, the district court issued an order indicating that it was unwilling to entertain the motion, which Lyndon did not appeal. Dkt. 197. Consequently, Lyndon's renewed attempt in his brief to seek a ruling on his Rule 60(b)(2) motion is not justiciable. See infra pp.30-32."*

Here, SEC has sought to keep the company's accounting records out of the record and out of consideration in this appeal. But the record shows that Lyndon had previously introduced the evidence to the court as available in the public domain (see Lyndon Link)

and therefore, it was properly provided and available to the court.

Despite SEC's attempt to keep the QuickBooks Enterprise files out of the record, the same financials were published in the public domain between 2009-2011 (see SEC Link above). These financials in the public domain, combined with recent evidence that SEC has possession of the auditors' testimony, the audit file and their work papers, collectively show that any financial claim submitted to the court contrary to such records are false, without also contradicting the auditors' work – which obviously can only be done by a properly licensed and experienced professional – which Ms. Shau is not. Malone-Bailey is an SEC licensed audit firm with more than 100 public company clients. So, as argued by Lyndon in his Appellant Brief, the court erred by failing to determine the SEC's financial claim had no basis of fact whatsoever.

From the record, we can clearly see that SEC's staff Accountant Ms. Shau knowingly reclassified and categorized company transactions to reflect Lyndon's personal expenses for the sole purpose of wrongfully obtaining a financial judgment. Ms. Shau's foreknowledge of the company's auditor testimony proves that "scienter" existed when Ms. Shau fabricated SEC's financial records, committing fraud against Lyndon, a crime for which she is likely immune from prosecution despite there being no constitutional basis for SEC to defraud without consequence.

V. THE SEC DEEPENS THEIR CONVICTION THAT THEIR OWN FRAUDULENT MISREPRESENTIONS BEFORE THE COURT ARE IRRELEVANT

On page 10, SEC states "*...on January 31, 2014, the Commission made initial disclosures and produced 'all documents in its possession, custody, or control that it may use to support its remaining claims, which concern the amounts of disgorgement*

and civil penalties owed by Lyndon.' Dkt. 75 at 2."

Because of recent evidence that reveals SEC's hidden possession of the audit file, auditors' work papers and auditors' testimony as recent as July 6, 2012, these facts bring clarity that SEC's statement on January 31, 2014 was false and a gross omission of fact.

Experienced professionals know that the role of public-company auditors is, among other things, to verify the accuracy of expense categorization and verify the money-trail from banks relating thereto, and then certify such facts for the benefit of the public. And accordingly, the auditors' work papers represent the underlying data to support audit files and financial statements, the same financials in the public domain (See SEC Link above). The SEC's choice to omit these facts regarding "discovery" under its settlement agreement obligation is clear evidence that SEC does not consider any "actual" accounting records to be relevant in calculating "disgorgement". This issue begs an answer to what constitutional basis gives SEC such awesome power that it can make this determination without an expert opinion, based solely upon the staff representation of an unqualified professional as argued by Lyndon in Dkt 103, page 3, lines 15-19?

VI. THE SEC IN APPELLEE'S BRIEF FAILS TO ADDRESS ARGUMENTS FROM LYNDON'S APPALLANT BRIEF

A. Nowhere in the record does SEC deny interfering in the company's financing of $10,000,000, which resulted in the closing of its main offices in 2011 and Lyndon's personal bankruptcy.

B. Nowhere in the record does SEC deny its "omission of facts", argued numerous times by Lyndon, leading up to, resulting in this case and continuing herein.

C. Although SEC denies its obligation to provide Lyndon legal representation, nowhere

in the record does SEC deny its responsibility for creating the circumstances which have led to Lyndon's inability to afford legal representation in this case.

D. Nowhere in the record does SEC deny its obligation to provide "discovery" under the terms of the parties' settlement agreement.

E. The SEC, however, does deny providing "discovery" under the parties' settlement agreement, at worst because they are still "hiding" facts revealed in the record, or at best by indicating that "actual", audited financial records and other documents including "auditor testimony" have no place in the their determination of disgorgement amounts, as well as any financial records in the public domain or in their possession, collected during their 2.5 year investigation.

F. Nowhere in the record does SEC deny they "fabricated" their financial claim.

G. Nowhere in the record does SEC deny that their fabricated documents were fraudulent – the record shows that Ms. Shau's presence during auditor testimony is evidence she knew her fabricated financials were contrary to the company's audited financials.

H. Nowhere in the record does SEC deny that Ms. Shau lacks the experience to audit or contradict a public company's audited financials.

CONCLUSION

In digesting SEC's entire Appellee Brief, any reasonable person can see that SEC failed to address most, if not all, of Lyndon's 26 arguments in his Appellant Brief.

Lyndon requests this court reverse and vacate the district court's financial judgment based upon its numerous failures and abuse of discretion.

Lyndon further requests this court reverse and vacate the district court's original judgment, which represents the parties' settlement agreement, based upon SEC's material

breach and the court's numerous failures and abuse of discretion.

Lyndon requests that this court order SEC to produce all discovery production as previously requested within Lyndon's subpoenas, which they disregarded, and do so within 30 days from such order.

Lyndon also requests this court order the SEC to discontinue its ongoing online campaign which places two SEC web pages regarding this case near the top of Google search results for "Troy Lyndon", by omitting the SEC's name in the page title, and excluding the term "settlement" anywhere therein, causing Lyndon to be unable to find gainful employment and afford legal representation to protect his rights.

Dated: June 15, 2015 Respectfully submitted,

_____

/s/Troy Lyndon, Appellant

CERTIFICATE OF COMPLIANCE

I certify under Ninth Circuit Rule 32-1 that this brief complies with the type-volume limitation in Fed. R. App. P., Rule 32(a)(7), that this brief uses a proportionally spaced 14-point Times New Roman font and contains 6992 words.

_____

/s/Troy Lyndon, Appellant