

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

Case No.: 1:11-cv-24438-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**STIEFEL LABORATORIES, INC.,
and CHARLES W. STIEFEL,**

Defendants.

FINAL JUDGMENT AGAINST DEFENDANT STIEFEL LABORATORIES, INC.

THIS CAUSE comes before the Court on Plaintiff Securities and Exchange Commission's (the "Commission") Unopposed Motion for Entry of Final Judgments Against Defendants Stiefel Laboratories, Inc. ("Stiefel Labs") and Charles W. Stiefel and for the Court to Establish Fair Fund (the "Motion") [ECF No. 232]. The Court has reviewed the Motion and the record and is otherwise fully advised.

Without admitting or denying the allegations of the Complaint (except that Stiefel Labs admits the jurisdiction of the Court over it and over the subject matter of this action), Stiefel Labs has entered a general appearance, consented to entry of this Final Judgment, waived findings of fact and conclusions of law, and waived any right to appeal from this Final Judgment. The Court, therefore, finds that good cause exists for entry of final judgment against Stiefel Labs.

Accordingly, the Motion is **GRANTED**. The Court further orders as follows:

I. DISGORGEMENT, PREJUDGMENT INTEREST, AND CIVIL PENALTY

IT IS ORDERED AND ADJUDGED that Stiefel Labs is liable to the Commission for disgorgement of \$23,000,000, representing gains as a result of the conduct alleged in the

Complaint, together with prejudgment interest on disgorgement of \$2,210,000, and a civil penalty of \$1,300,000, pursuant to Section 21(d)(3) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(d)(3), for a total of \$26,510,000.

IT IS FURTHER ORDERED AND ADJUDGED that:

1. Stiefel Labs shall satisfy its disgorgement, prejudgment interest, and civil penalty obligation by paying it to the Commission within 30 days after entry of this Final Judgment.
2. Stiefel Labs may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the Commission's website at <https://pay.gov/public/form/start/39621196>. Stiefel Labs may also pay by certified check, bank cashier's check, or United States postal money order payable to the "Securities and Exchange Commission," which shall be delivered or mailed to:

Enterprise Services Center, Accounts Receivable Branch
6500 South MacArthur Boulevard
HQ Bldg. Room 265, AMK-326
Oklahoma City, OK, 73169

and shall be accompanied by a letter identifying (1) the case title, (2) the civil action number, (3) the name of the Court, (4) Stiefel Labs as a Defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

3. Stiefel Labs shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action:

Robert K. Levenson
Senior Trial Counsel, Securities and Exchange Commission
801 Brickell Avenue, Suite 1950
Miami, FL, 33131.

By making this payment, Stiefel Labs relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to it.

4. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of this Final Judgment. Stiefel Labs shall pay post judgment interest on any delinquent amounts, pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.
5. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.
6. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Stiefel Labs shall not, after offset or reduction of any award of compensatory damages in any Related Investor

Action¹ based on its payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Stiefel Labs' payment of a civil penalty in this action ("Penalty Offset"). If a court in any Related Investor Action grants such a Penalty Offset, Stiefel Labs 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 Final Judgment.

II. INCORPORATION OF CONSENT

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

III. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that the Court shall retain jurisdiction of this matter and over Stiefel Labs in order to implement and carry out the terms of this Final Judgment and all orders and decrees that may be entered, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, and to order any other relief that the Court deems appropriate under the circumstances.

¹ For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Stiefel Labs by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

IV. RULE 54(b) CERTIFICATION

IT IS FURTHER ORDERED AND ADJUDGED that, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

DONE AND ORDERED in Chambers at Miami, Florida, this 4th day of June, 2020.

A handwritten signature in black ink, appearing to read "Darrin P. Gayles", written over a horizontal line.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

Copies to all parties and counsel of record

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

CASE NO. 1:11-CV-24438-GAYLES

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**STIEFEL LABORATORIES INC.
and CHARLES W. STIEFEL,**

Defendants.

**CONSENT OF DEFENDANT STIEFEL LABORATORIES INC.
TO FINAL JUDGMENT**

1. Defendant Stiefel Laboratories Inc. ("Stiefel Labs") acknowledges having been served with the Summons and the Complaint in this action, enters a general appearance, and admits the Court's jurisdiction over it and over the subject matter of this action.

2. Without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction, which it admits), Stiefel Labs hereby consents to the entry of the Final Judgment Against Defendant Stiefel Laboratories Inc. ("Final Judgment") in the form attached hereto and incorporated by reference herein. The Final Judgment, among other things, orders Stiefel Labs to pay disgorgement of \$23,000,000, prejudgment interest on disgorgement of \$2,210,000, and a civil penalty of \$1,300,000.

3. Stiefel Labs acknowledges that the civil penalty paid pursuant to the Final 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, Stiefel Labs agrees that it shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Stiefel Labs' payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Stiefel Labs' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Stiefel Labs agrees that it 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 Stiefel Labs by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

4. Stiefel Labs agrees that it 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 it may be required to pay pursuant to the Final 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. Notwithstanding the foregoing, Stiefel Labs may pay the penalty with funds from the Escrow Agreement dated July 22, 2009 Between S.J. Galaxy Acquisition Corporation, Stiefel Laboratories, Inc., Charles W. Stiefel (solely in his capacity as representative of the stockholders). Stiefel Labs further agrees that it 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 Stiefel Labs pays pursuant to the Final 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. Stiefel Labs waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Stiefel Labs waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Stiefel Labs 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 it or to anyone acting on its behalf, to induce it to enter into this Consent.

8. Stiefel Labs agrees this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Stiefel Labs will not oppose enforcement of the Final 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.

10. Stiefel Labs waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to it of the Final Judgment's terms and conditions.

11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Stiefel Labs in this civil proceeding. Stiefel Labs acknowledges 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. Stiefel

Labs waives any claim of Double Jeopardy based upon the settlement of this proceeding, including imposition of any remedy or civil penalty herein.

12. Stiefel Labs 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 Stiefel Labs' agreement to comply with the terms of Section 202.5(e), it: (a) 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; (b) will not make or permit to be made any public statement to the effect that it does not admit the allegations of the Complaint, or that this Consent contains no admission of the allegations, without also stating it does not deny the allegations; and (c) upon filing of this Consent, Stiefel Labs hereby withdraws any papers filed in this action to the extent they deny any allegation in the Complaint. If Stiefel Labs breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Stiefel Labs': (i) testimonial obligations; or (ii) the right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Stiefel Labs 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 attorneys' fees or other fees, expenses, or costs expended by Stiefel Labs to defend against this action. For these purposes, Stiefel Labs

agrees it is not the prevailing party in this action, since the parties have reached a good faith settlement.

14. Stiefel Labs agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Stiefel Labs agrees that this Court shall retain jurisdiction over it and over this matter for the purpose of enforcing the terms of the Final Judgment.

February 26th, 2020

Stiefel Laboratories, Inc.

By: *Timothy A. Thelen*
Name: Timothy A. Thelen
Title: Assistant General Counsel
Address: GlaxoSmithKline
5 Moore Drive
Research Triangle Park
North Carolina 27709

STATE OF FLORIDA)
)
COUNTY OF Miami-Dade)

On this 26th day of February 2020, before me personally appeared Timothy A. Thelen, who is personally known to me or produced Raleigh, NC, a driver's license bearing his name and photograph as identification, and who executed this Consent, and he acknowledged to me that he executed the same.

Nancy Gintart
Notary Public

Approved as to Form:

By: *David Coulson*
David Coulson, Esq.
Greenberg Traurig LLP
Counsel to Stiefel Labs

