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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

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14 SECURITIES AND EXCHANGE COMMISSION,

15 Plaintiff,

16 vs.

17 WILLIAM J. "BOOTS" DEL BIAGGIO III,

18 Defendant.
19

Case No. CV-08-5450 CRB

NOTICE OF DISMISSAL OF PLAINTIFF'S
CLAIMS FOR DISGORGEMENT AND
CIVIL PENALTIES AGAINST
DEFENDANT

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21 Pursuant to Federal Rule of Civil Procedure 41(a)(1), plaintiff Securities and Exchange
22 Commission ("Commission") hereby voluntarily dismisses with prejudice its unresolved claims for
23 disgorgement and civil penalties against defendant William J. "Boots" Del Biaggio III ("Del
24 Biaggio"). Federal Rule of Civil Procedure 41(a)(1) permits a plaintiff to dismiss claims voluntarily
25 where the opposing party, such as Del Biaggio here, has not filed an answer or summary judgment
26 motion with the Court.

27 The Commission brought the above-titled action against Del Biaggio on December 4, 2008.
28 At the time of filing, Del Biaggio consented to a final judgment that permanently enjoined him from

1 committing any future violations of the antifraud provisions of the federal securities laws. The Court
2 entered the Final Judgment against Del Biaggio on December 12, 2008. Section IV of the Final
3 Judgment states that “Defendant shall pay disgorgement of ill-gotten gains, prejudgment interest
4 thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and
5 Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act
6 [15 U.S.C. § 80b-9]. The Court shall determine the amounts of the disgorgement and civil penalty
7 upon motion of the Commission.” Thus, the only remaining issues in the above-titled action are the
8 amount of disgorgement and civil penalties to be imposed against Del Biaggio.

9 On September 8, 2009, this Court sentenced Del Biaggio to a prison term of 97 months and
10 imposed a restitution order of \$67,498,462.00 in a related criminal action, *United States of America v.*
11 *William J. Del Biaggio III*, CR-08-874 CRB, for the same conduct at issue in the Commission’s suit.
12 In light of Del Biaggio’s criminal sentence, including his prison term and restitution order, the
13 Commission hereby dismisses its claims for disgorgement and civil penalties against Del Biaggio,
14 pursuant to Federal Rule of Civil Procedure 41(a)(1).

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16 Dated: February 19, 2010

Respectfully submitted,

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18 _____
/s/

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