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

13  
14 SECURITIES AND EXCHANGE COMMISSION,  
15 Plaintiff,  
16 vs.  
17 DAVID SCOTT CACCHIONE,  
18 Defendant.  
19  
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Case No. CV-09-1259 CRB

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

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 David Scott Cacchione ("Cacchione"). Federal  
24 Rule of Civil Procedure 41(a)(1) permits a plaintiff to dismiss claims voluntarily where the opposing  
25 party, such as Cacchione here, has not filed an answer or summary judgment motion with the Court.

26 The Commission brought the above-titled action against Cacchione on March 24, 2009. At  
27 the time of filing, Cacchione consented to a final judgment that permanently enjoined him from  
28

1 committing any future violations of the antifraud provisions of the federal securities laws. The Court  
 2 entered the Final Judgment against Cacchione on March 31, 2009. Section IV of the Final Judgment  
 3 states that “Defendant shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a  
 4 civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3)  
 5 of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. §  
 6 80b-9]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of  
 7 the Commission.” Thus, the only remaining issues in the above-titled action are the amount of  
 8 disgorgement and civil penalties to be imposed against Cacchione.

9 On October 7, 2009, this Court sentenced Cacchione to a prison term of 60 months and  
 10 imposed a restitution order of \$47,542,887.00 in a related criminal action, *United States of America v.*  
 11 *David Scott Cacchione*, CR-09-00296 CRB, for the same conduct at issue in the Commission’s suit.  
 12 In light of Cacchione’s criminal sentence, including his prison term and restitution order, the  
 13 Commission hereby dismisses its claims for disgorgement and civil penalties against Cacchione,  
 14 pursuant to Federal Rule of Civil Procedure 41(a)(1).

15  
 16 Dated: February 19, 2010

Respectfully submitted,

17  
 18 /s/

19 Marc J. Fagel  
 20 Mark P. Fickes  
 21 Kristin A. Snyder

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