

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80128-CIV-ZLOCH

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

FINAL JUDGMENT AND PERMANENT
INJUNCTION AS TO DEFENDANTS
BRYAN KOS AND DONALD E. OEHMKE

CONCORDE AMERICA, INC.,
ABSOLUTE HEALTH AND FITNESS,
INC., HARTLEY LORD, DONALD E.
OEHMKE, BRYAN KOS, THOMAS M.
HEYSEK, ANDREW M. KLINE, AND
PAUL A. SPREADBURY,

Defendants,

and

DASILVA, SA, VANDERLIP HOLDINGS,
NV, CHIANG ZE CAPITAL, AVV,
RYZCEK INVESTMENTS, GMBH,
BARRANQUILLA HOLDINGS, SA,

Relief Defendants.

THIS MATTER is before the Court upon Defendant Bryan Kos's
Consent To Final Judgment Of Permanent Injunction And Other Relief
(DE 166) and Defendant Donald E. Oehmke's Consent To Final Judgment

Of Permanent Injunction And Other Relief (DE 167). The Court has carefully reviewed said Consents and the entire Court file and is otherwise fully advised in the premises.

Plaintiff Securities and Exchange Commission (hereinafter the "Commission") commenced the above-styled cause seeking a permanent injunction to prohibit violations by Donald E. Oehmke (hereinafter "Oehmke"), Brian Kos (hereinafter "Kos"), and others of Section 10(b) of the Securities and Exchange Act of 1934, 28 U.S.C. § 78 et seq., and Rule 10b-5, 17 C.F.R. §2 40.10b-5. The Commission also sought disgorgement of wrongfully obtained funds, as well as prejudgment interest and a civil penalty from Defendants Kos and Oehmke pursuant to Section 21(d)(3) of the Securities and Exchange Act of 1934. See DE 1.

Oehmke and Kos, in their respective Consents (DE Nos. 166 & 167), without admitting or denying any of the allegations in the Complaint (DE 1) filed herein admit the jurisdiction of the Court over them and over the subject matter of this action, and agree to the entry of a Final Judgment And Permanent Injunction against themselves. Additionally, Oehmke and Kos waive the entry of findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, and waive their right to appeal the Final

Judgment And Permanent Injunction.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Defendant Bryan Kos's Consent To Final Judgment Of Permanent Injunction And Other Relief (DE 166) and Defendant Donald E. Oehmke's Consent To Final Judgment Of Permanent Injunction And Other Relief (DE 167) be and the same are approved, adopted, and ratified as follows:

I. Violation Of Section 10(b) of the Exchange Act
and Rule 10b-5 Thereunder

Kos and Oehmke, their agents, officers, servants, employees, attorneys, representatives, and all persons in active concert or participation with them, and each of them respectively, directly or indirectly, who receive actual notice of this Final Judgment And Permanent Injunction, by personal service or otherwise, be and the same are hereby permanently ENJOINED from knowingly, willfully, or recklessly, directly or indirectly, singly or in concert, as aiders and abettors or otherwise, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange from:

- (1) employing any device, scheme, or artifice to defraud;
- (2) making any untrue statements of material fact or omitting

to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(3) engaging in any act, practice or course of business which operates or would operate as fraud or deceit upon any person, in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

II. Penny Stock Bar

IT IS FURTHER ORDERED AND ADJUDGED that Kos and Oehmke are hereby permanently ENJOINED from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price less than five dollars (\$5.00) except as provided in Rule 3A51-1 under the Exchange Act, 17 C.F.R. 240.3A51-1.

III. Offering Ban

IT IS FURTHER ORDERED AND ADJUDGED that Kos and Oehmke are hereby ENJOINED from participating in an unregistered offering of securities while acting as, or on behalf of, or in association with an issuer, underwriter, broker or dealer of securities as provided under Section 305(b) of the Sarbanes-Oxley Act of 2002, 15 U.S.C.

§ 7201, et seq.

IV. Disgorgement And Civil Penalty

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff Security and Exchange Commission (hereinafter the "Commission") does have and recover from Defendant Bryan Kos (hereinafter "Kos") \$499,573.00 for which let execution issue. Said recovery of \$499,573.00 (hereinafter "the Funds") represents profits gained as a result of the conduct alleged in the Complaint (DE 1) in the amount of \$350,000.00, together with pre-judgment interest thereon in the amount of \$29,573.00, and a civil penalty of \$120,000.00 pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3). Kos shall satisfy this obligation as follows: \$100,000.00 shall be due and payable within 30 days of entry of Final Judgment And Permanent Injunction; \$100,000.00 shall be due and payable within 90 days of entry of Final Judgment And Permanent Injunction; \$100,000.00 shall be due and payable within 180 days within the entry of Final Judgment And Permanent Injunction; \$100,000.00 shall be due and payable within 270 days of the entry of Final Judgment And Permanent Injunction; and the remaining \$99,573.00 shall be due and payable within one year of entry of Final Judgment And Permanent Injunction. All payments shall be made payable to the Clerk of this Court of the United States District Court for the Southern

District of Florida under the cover of a letter identifying Kos as a Defendant in the instant action, setting forth the title, name of the Court, and civil action number of the above-styled cause; and specifying that payment is made pursuant to Final Judgment And Permanent Injunction. Kos shall simultaneously transmit photocopies of said payment and letter to Alise Johnson, Senior Trial Counsel, Securities and Exchange Commission, 801 Brickell Ave., Suite 1800, Miami, Florida 33131. By making said payment, Kos relinquishes all legal and equitable right, title, and interest in the Funds, and no part of the Funds shall be returned to him. Kos shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961 (2006).

The Clerk of this Court is hereby DIRECTED to deposit the Funds into an interest-bearing account with the Court Registry Investment System. The Funds, together with any interest and income earned thereon, shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk of this Court is hereby DIRECTED, without further Order of the Court, to deduct from the income earned on the Funds a fee equal to ten percent (10%) of the income earned on said Funds. Such fee shall

not exceed that authorized by the Judicial Conference of the United States.

If Kos fails to make any single payment, or part of any single payment, of the Funds within the precise time specified for such payment the installment payment terms of this Final Judgment And Permanent Injunction shall no longer apply, and the full amount of Kos's remaining unpaid disgorgement, prejudgment interest, and civil penalty shall be immediately due, owing and payable, plus post-judgment interest on such remaining unpaid amount calculated at the rate of interest set forth in Rule 600(b) of the Commission's Rules of Practices, 17 C.F.R. § 2001.600(b), from the date of entry of Final Judgment And Permanent Injunction until such amount is paid in full.

The Commission may by motion propose a plan to distribute the Funds subject to the Court's approval. Such a plan may provide that the Funds shall be distributed pursuant to the Fair Fund provisions of Section 7246 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201, et seq. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment And Permanent Injunction 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, Kos agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on his payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of his payment of a civil penalty in this action ("Penalty Offset"). If the Court in any Related Investor Action grants such a Penalty Offset, Kos 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 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 And Permanent Injunction. For purposes of this paragraph, a "Related Investor Action" means a private-damages action brought against Kos by or on behalf of one or more investors based substantially on the same facts as alleged in the Complaint (DE 1) of the above-styled cause.

V. Disgorgement And Civil Penalty

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff Security and Exchange Commission (hereinafter the "Commission") does have and

recover from Defendant Donald E. Oehmke (hereinafter "Oehmke") \$1,454,484.00 for which let execution issue. Said recovery represents profits gained as a result of the conduct alleged in the Complaint (DE 1) in the amount of \$1,095,177.00, together with prejudgment interest thereon in the amount of \$109,307.00, and a civil penalty of \$250,000.00 pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3), for a total of \$1,454,484.00 (hereinafter "the Funds"). Oehmke shall satisfy this obligation by paying \$700,000.00 within 15 days of entry of Final Judgment And Permanent Injunction. Oehmke shall pay the remaining obligation of \$754,484.00 in four quarterly payments of \$188,621.00 according to the following schedule: 1) the first payment within 105 days of entry of Final Judgment And Permanent Injunction; 2) the second payment within 195 days of entry of Final Judgment And Permanent Injunction; 3) the third payment within 285 days of the entry of Final Judgment And Permanent Injunction; and 4) final payment within 365 days of the entry of Final Judgment And Permanent Injunction. Interest shall accrue on the additional \$754,484.00 payment at a rate set forth in Rule 600(b) of the Commissions Rules of Practice, 17 C.F.R. § 201.600(b), from the date of entry of Final Judgment And Permanent Injunction until such amount is paid. All payments shall be made payable to the Clerk of this Court of

the United States District Court for the Southern District of Florida under the cover of a letter identifying Oehmke as a Defendant in the instant action, setting forth the title, name of the Court, and civil action number of the above-styled cause; and specifying that payment is made pursuant to Final Judgment And Permanent Injunction. Oehmke shall simultaneously transmit photocopies of said payment and letter to Alise Johnson, Senior Trial Counsel, Securities and Exchange Commission, 801 Brickell Ave., Suite 1800, Miami, Florida 33131. By making said payment, Oehmke relinquishes all legal and equitable right, title, and interest in the Funds, and no part of the Funds shall be returned to him. Oehmke shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961 (2006).

The Clerk of this Court is hereby **DIRECTED** to deposit the Funds into an interest-bearing account with the Court Registry Investment System. The Funds, together with any interest and income earned thereon, shall be held in the interest bearing account until further Order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is hereby **DIRECTED**, without further Order of the Court, to deduct from the income earned on the Funds a fee equal to ten percent (10%) of

the income earned on said Funds. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

Oehmke agrees that he 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 that Oehmke pays pursuant to Final Judgment And Permanent Injunction, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Oehmke further agrees that he 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 Oehmke pays pursuant to Final Judgment And Permanent Injunction, regardless of whether such penalty amounts, or any part thereof, are added to a distribution fund or otherwise used for the benefit of investors.

If Oehmke fails to make any single payment, or part of any single payment, of the Funds within the precise time specified for such payment, the installment terms of this Final Judgment And Permanent Injunction shall no longer apply, and the full amount of Oehmke's remaining unpaid disgorgement, pre-judgment interest, and civil penalty shall be immediately due, owing and payable, plus post-judgment interest on such remaining unpaid amount calculated

at the rate of interest set forth in Rule 600(b) of the Commission's Rules of Practices, 17 C.F.R. § 2001.600(b), from the date of entry of Final Judgment And Permanent Injunction until such amount is paid in full.

The Commission may by motion propose a plan to distribute the Funds subject to the Court's approval. Such a plan may provide that the Funds shall be distributed pursuant to the Fair Fund provisions of Section 7246 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201, et seq. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment And Permanent Injunction 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, Oehmke agrees that he shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Oehmke's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of his payment of a civil penalty in this action ("Penalty Offset"). If the Court in any Related Investor Action grants such a Penalty Offset, Oehmke agrees that he 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 And Permanent Injunction. For purposes of this paragraph, a "Related Investor Action" means a private-damages action brought against Oehmke by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint (DE 1) in the above-styled cause.

VI. Incorporation of Consent

IT IS FURTHER ORDERED AND ADJUDGED that Kos and Oehmke shall comply with the provisions of the instant Consents To Final Judgment Of Permanent Injunction And Other Relief (DE Nos. 166 & 167), and that said Consents are incorporated by reference as if fully set forth herein.

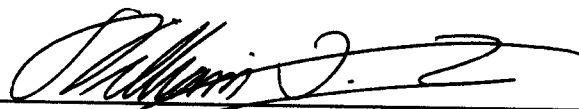
VI. Retention of Jurisdiction

IT IS FURTHER ORDERED AND ADJUDGED that the Court shall retain Jurisdiction of the above-styled cause for the purposes of enforcing the terms of this Final Judgment And Permanent Injunction.

VII. Rule 54(b) Certification

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is DIRECTED to enter this Final Judgment And Permanent Injunction forthwith and without further notice.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida this 21st day of November, 2006.



WILLIAM J. ZLOCH
Chief United States District Judge

Copies furnished:
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