

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

VS.

MICHAEL BIELLO,

Defendant.

§§

Civil Action No. H-09-752

AGREED FINAL JUDGMENT AS TO DEFENDANT MICHAEL BIELLO

The Securities and Exchange Commission having filed a Complaint and Defendant Michael Biello (“Biello” or “Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section

FINAL JUDGMENT AS TO DEFENDANT
MICHAEL BIELLO

10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit 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; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing

securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person of such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) *communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith*

(i) *to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;*

- (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$6,036, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$596.34 and a civil penalty in the amount of \$6,036 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$12,668.34 by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission within 10 days of the entry of the Final Judgment. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Michael Biello as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the

funds paid pursuant to this paragraph to the United States Treasury.

IV.

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

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: April 23, 2009.


UNITED STATES DISTRICT JUDGE

☒ New submission**MONEY ORDERED SUMMARY**☐ Revised submissionParty name Michael BielloBranch chief Douglas A. GordimerAction name ACR Group, Inc.Primary staff attorney David B. ReeceCase number FW-03218-CTelephone of primary staff 817-978-6476Case Type (check only one): ☐ AP ☒ Civil If filed or instituted include docket or file number 2009-cv-0752 SDTX

(Fill in all applicable fields. If not applicable, leave blank.)

	Disgorgement	Insider trading penalties	Remedies Act penalties	Other	Total
Amount ordered	\$6,036.00	\$6,036.00			\$12,072.00
Prejudgment interest	\$596.34				\$596.34
Amount waived					\$0.00
Total ordered	\$6,632.34	\$6,036.00	\$0.00	\$0.00	\$12,668.34
Payment plan (if yes, give details below)	No	No	No	No	
Penalties appropriate but not ordered		No	No		
Joint and several	No	No	No	No	
Other joint/several debtors					
Receiver or trustee appointed					
Pay to -- select from drop-down menu	SEC	SEC			

If applicable, describe the terms of any payment plan:

(To be filled in if known or after judgment/order is executed.)

Payment plan due dates	Amounts	Comments

Has any portion of the money been escrowed?☐ Yes - specify amount: _____ ☒ No**Will disgorgement and prejudgment interest be distributed to injured investors?**☐ Yes ☒ No, money is to be sent to the Treasury general fund. ☐ To be determined. ☐ N/A**Will penalties be distributed to injured investors through a fair fund?**☐ Yes ☒ No, money is to be sent to the Treasury general fund. ☐ To be determined. ☐ N/A

If distribution of disgorgement or penalties is undetermined, describe reason and target date for decision:

Will a criminal judgment offset any amount ordered in the Commission's case on this form? ☐ Yes ☒ No.

If yes, explain in comment section below.

If there will be a distribution, what is the earliest expected date that the money will be distributed?

(required for purposes of investing the funds pending distribution)

Additional comments:

(To be filled in by the Office of the Secretary.)

Date approved by Commission	<u>3/5/2009</u>	Tracking number	<u>1091</u>
Reviewed by	<u>LaQuita Barnett</u>	Date	<u>3/6/2009</u>

(To be filled in after order is executed. To be signed by the Office of the Secretary in administrative proceedings only.)

Date of order	<u>4/24/2009</u>	Check box to confirm that order is attached	<input checked="" type="checkbox"/>
Reviewed by (Secretary)		Date	