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(a)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**Securities and Exchange Commission,**

**Plaintiff,**

**vs.**

**CytoCore, Inc.,**

**Daniel J. Burns, and**

**Robert F. McCullough, Jr.**

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) **CASE NO. 1:11-cv-246**

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) **Hon. Robert W. Gettleman**

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) **Magistrate Judge**

) **Honorable Arlander Keys**

**FINAL JUDGMENT AS TO DEFENDANTS  
CYTOCORE, INC. AND ROBERT F. MCCULLOUGH, JR.**

The Securities and Exchange Commission having filed a Complaint and Defendants CytoCore, Inc. ("CytoCore") and Robert F. McCullough, Jr. ("McCullough") having entered a general appearance; consented to the Court's jurisdiction over Defendants 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 Defendants CytoCore and McCullough, and Defendants' 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(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78n(a)] and Rule 14a-9 [17 C.F.R. § 240.14a-9] promulgated thereunder, from, directly or indirectly, by the use of means or instrumentalities of interstate commerce or of the mails, or of a facility of a national securities exchange or otherwise, soliciting by means of a proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing statements which, at the time and in the light of the circumstances under which they are made, are false and misleading with respect to material facts, or omit to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct statements in earlier communications with respect to the solicitation of the proxy for the same meeting or subject matter which are false or misleading.

II.

It Is HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant McCullough and Defendant McCullough'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 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. § 240.16a-3] promulgated thereunder, from failing to file with the Commission required statements of changes in beneficial ownership on Form 4 and/or annual statements on Forms 5.

III.

It Is HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants CytoCore and McCullough, and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants' Consents are incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein, including, but not limited to, the undertakings for Defendant CytoCore to, for a period of at least two years:

(a) Institute, via board resolution, and comply with the following internal policies and procedures:

- i. A policy requiring the approval of CytoCore's Controller to enter into any consulting, employment, or personal services agreement with any person or entity as a means of ensuring that any such agreement will not violate Section 15(a) of the Exchange Act;
- ii. A policy prohibiting payment of any commissions or fees to any person or entity based on that person's fundraising efforts for CytoCore unless such person or entity is registered as a broker with the Securities and Exchange Commission;
- iii. A policy requiring CytoCore to inform, and to require its employees, officers, and directors to acknowledge, the aforementioned policies on an annual basis; and
- iv. A policy requiring CytoCore's Controller to (1) report any new agreement described in paragraph 3(a)(i) to CytoCore's Board of Directors by no later than the next scheduled CytoCore Board of Directors meeting following the execution of such agreement; and (2) to certify to the Board of Directors that the agreement complies with CytoCore's policy described in paragraph 3(a)(ii); and

Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by knowingly providing substantial assistance to any person or entity who effects transactions in or induces or attempts to induce the purchase or sale of securities when that person or entity is not registered with the Commission as a broker or dealer or associated with an entity registered with the Commission as a broker-dealer.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant McCullough shall pay a civil penalty in the amount of \$100,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall make this payment within 14 days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. 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 Defendant McCullough 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 McCullough 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.

V.

(b) certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Defendant CytoCore agrees to provide such evidence. Defendant CytoCore shall submit the certification and supporting material to James A. Davidson, Assistant Regional Director, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

VI.

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.

VII.

There being no just reason for delay, 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.

Dated: January 28, 2011

Robert W. Gellman  
UNITED STATES DISTRICT JUDGE