

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 17- 21033-CIV-LENARD/GOODMAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**LOTTONET OPERATING CORP.,
DAVID GRAY,
JOSEPH VITALE A/K/A DONOVAN KELLY,**

Defendants, and

**ORACLE MARKETING GROUP INC.,
CRM INTERACTIVE LLC,
THE COUNCIL CLUB LLC,**

Relief Defendants.

FINAL DEFAULT JUDGMENT AGAINST DEFENDANT JOSEPH VITALE

The Securities and Exchange Commission filed a Complaint and Defendant Joseph Vitale a/k/a Donovan Kelly (“Vitale”) failed to enter an appearance or respond to the Complaint, and a Clerk’s Default has been entered against him (D.E. 49). Accordingly, it is hereby

ORDERED AND ADJUDGED that Final Default Judgment is entered against Joseph Vitale, as follows:

I.

PERMANENT INJUNCTION

A. Section 17(a)(1) of the Securities Act

IT IS ORDERED AND ADJUDGED that Defendant Vitale is permanently restrained and enjoined from violating Section 17(a)(1) of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. § 77q(a)(1), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: to employ any device, scheme, or artifice to defraud, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or

misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale.

B. Section 17(a)(2) of the Securities Act

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Vitale is permanently restrained and enjoined from violating Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: to obtain money or property by means of any untrue statement of a material fact or any omission 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, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale.

C. Section 17(a)(3) of the Securities Act

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Vitale is permanently restrained and enjoined from violating Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale.

D. Section 10(b) and Rule 10b-5(a) of the Exchange Act

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Vitale is permanently restrained and enjoined from violating Section 10(b) and Rule 10b-5(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), 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, to employ any device, scheme, or artifice to defraud, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants'

qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale.

E. Section 10(b) and Rule 10b-5(b) of the Exchange Act

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Vitale is permanently restrained and enjoined from violating Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b), 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, 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, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale.

F. Section 10(b) and Rule 10b-5(c) of the Exchange Act

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Vitale is permanently restrained and enjoined from violating Section 10(b) and Rule 10b-5(c) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c), 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, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale.

G. Violating Section 15(a)(1) of the Exchange Act

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Vitale is permanently restrained and enjoined from violating Section 15(a)(1) of the Exchange Act by to making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale.

H. Aiding and Abetting Violations of Section 15(a)(1) of the Exchange Act

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Vitale is permanently restrained and enjoined from directly or indirectly aiding and abetting the violation of Section 15(a)(1) of the Exchange Act by knowingly or recklessly providing substantial assistance to

anyone making use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Preliminary Injunction by personal service or otherwise: (a) any of Vitale's officers, directors, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Vitale.

II. DISGORGEMENT

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Vitale is liable for disgorgement of \$789,356, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$24,028.57, for a total of \$813,384.57. This amount is deemed satisfied by the restitution ordered against Vitale in the criminal case concerning the same conduct at issue in the case, *United States v. Joseph Vitale*, Case No. 17-cr-60102 (S.D. Fla. 2017) (D.E. 36).

III. CIVIL PENALTY

IT IS FURTHER ORDERED AND ADJUDGED that the civil penalty against Vitale is hereby dismissed.

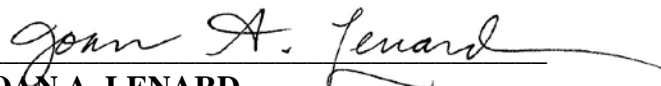
IV. RETENTION OF JURISDICTION

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

V. CERTIFICATION UNDER RULE 54(b)

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 Default Judgment forthwith and without further notice.

DONE AND ORDERED in Chambers at Miami, Florida, this 26th day of February, 2018.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE