

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

**CASE NO. 13-CV-61762-ROSENBAUM/HUNT**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RICHARD P. GREENE and PETER  
SANTAMARIA,

Defendants.

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**ORDER GRANTING PLAINTIFF'S MOTION FOR ENTRY OF  
DEFAULT JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF  
AGAINST DEFENDANT PETER SANTAMARIA**

This matter is before the Court on Plaintiff Securities and Exchange Commission's Motion for Entry of Default Judgment of Permanent Injunction and Other Relief Against Defendant Peter Santamaria [ECF No. 26]. On December 31, 2013, the Court issued an Order directing Defendant Peter Santamaria to show cause on or before January 16, 2014, why the Motion for Default Judgment should not be granted. ECF No. 27. The Court noted that "failure to timely respond may result in the granting of Plaintiff's Motion and the immediate entry of a default judgment against Defendant." *Id.* Plaintiff certified with the Court that it filed both its Motion for Default Judgment and the Court's Order to Show Cause on Santamaria on December 31, 2013. ECF No. 28. As of the date of this Order, Santamaria has not responded to Plaintiff's Motion or the Order to Show Cause.

Having considered the motion and the entire record, the Court hereby grants Plaintiff's Motion.

### **FINDINGS OF FACT**

On August 14, 2013, Plaintiff filed this action against Defendants Richard P. Greene and Peter Santamaria alleging fraud in violation of Section 17(a)(1) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a)(1); Section 10(b) of the Securities Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b); and Exchange Act Rule 10b-5(a) and (c), 17 C.F.R. § 240.10b-5(a) and (c). *See* ECF No. 1. The Complaint sets forth detailed facts alleging that defendants engaged in a fraudulent market-manipulation scheme involving the stock of VDO-Ph International, Inc. (“VDPH”).

By virtue of his default, Defendant Santamaria is taken to admit the well-pleaded allegations of fact in Plaintiff’s Complaint. *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009) (quoting *Nishimatsu Const. Co., Ltd. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)). Thus, the Court finds that Santamaria committed the violations alleged in the Complaint. The Court also finds that it has personal jurisdiction over Santamaria and the subject matter of this action and that venue is proper in the Southern District of Florida.

### **CONCLUSIONS OF LAW**

Santamaria’s fraudulent conduct violated Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5(a) and (c). These provisions prohibit essentially the same type of conduct. *United States v. Naftalin*, 441 U.S. 768, 773 (1979); *SEC v. Unique Financial Concepts, Inc.*, 119 F. Supp. 2d 1332, 1339 (S.D. Fla. 1998), *aff’d*, 196 F.3d 1195 (11th Cir. 1999).

A defendant engages in a fraudulent scheme in violation of these statutes and rules when he (1) commits a deceptive or manipulative act; (2) in furtherance of a scheme to defraud; and

(3) with scienter. *In re Alstom*, 406 F. Supp. 2d 433, 474 (S.D.N.Y. 2005) (citing *In re Global Crossing*, 322 F. Supp. 2d 319, 336 (S.D.N.Y. 2004)). Further, under Exchange Act Section 10(b) and Rule 10b-5, the deceptive acts must be carried out “in connection with the purchase or sale of any security.” *Stoneridge Investment Partners, LLC v. Scientific Atlanta, Inc.*, 552 U.S. 148, 160 (2008); 15 U.S.C. § 78j(b).

With respect to the first two elements, a defendant commits deceptive or manipulative acts in furtherance of a fraudulent scheme if he has “engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme.” *SEC v. Patel*, 2009 WL 3151143, \*9 (D.N.H. 2009) (quoting *Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006)); *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1471 (2d Cir. 1996) (holding that scheme liability extends to those “who had knowledge of the fraud and assisted in its perpetration”).

The third element, scienter, is a mental state embracing intent to deceive, manipulate or defraud. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). The Eleventh Circuit has concluded that scienter may be established by a showing of knowing misconduct or severe recklessness. *SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1324 (11th Cir. 1982). Finally, the Commission must establish the use of interstate commerce, the mail, or a national securities exchange. *SEC v. Corporate Relations Group*, 2003 WL 25570113 at \*7 (M.D. Fla. Mar. 28, 2003).<sup>1</sup>

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<sup>1</sup>Although liability under Rule 10b-5(b) requires a showing of the materiality of a misstatement or omission, materiality is not an element of scheme liability claims under Rule 10b-5(a) or (c). *Compare* 17 C.F.R. § 240.10b-5(b) with 10b5-(a) and (c) (subsection (b) expressly prohibits only misstatements or omissions that are “material” while subsections (a) and (c) together prohibit “any” device, scheme, artifice to defraud, act, practice or course of business); *In re Alstom*, 406 F. Supp. 2d at 474 (listing elements of 10b-5(a) and (c) “scheme liability” claim and not including materiality). Nevertheless, a reasonable investor considering purchasing or selling VDPH stock would certainly want to know if stock promoters were giving a purchaser of VDPH inducements to buy the stock in the form of VDPH shares and inside information regarding press releases in an effort to inflate the stock’s price and create the appearance of market interest.

The facts in the Complaint establish that Santamaria participated in a fraudulent scheme in connection with the purchase and sale of VDPH common stock in violation of Securities Act Section 17(a)(1) and Exchange Act Rule 10b-5(a) and (c). ECF No. 1 ¶¶ 9, 14-26. When Santamaria agreed to manipulate the price of VDPH stock and pay a kickback as part of that scheme, he engaged in a course of deceptive conduct in violation of those antifraud provisions of the securities laws. *Id.*

The alleged facts also establish that when Santamaria engaged in the deceptive conduct, he acted with a high degree of scienter. Santamaria agreed to pay a kickback and give advance notice of press releases to a purchaser of VDPH stock in order to create the illusion that VDPH's stock was more liquid and more valuable than it actually was. *Id.* at 14-24. The scheme was directly in connection with the purchase of a security, VDPH's stock. Accordingly, the Complaint's allegations, deemed true, meet this element. *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (courts should interpret the "in connection with" requirement broadly to effectuate the remedial purpose of the federal securities laws). ECF No. 1 ¶¶ 9, 14-26. Finally, by using the mails, the OTC Link trading system, and by issuing press releases, Santamaria used instrumentalities of interstate commerce to carry out the VDPH scheme. *Id.* ¶¶ 9, 20, 24-26.

Plaintiff seeks to enjoin Santamaria from committing further violations of the Securities Act and Exchange Act. ECF No. 1 at 7-8. The Securities Act provides, in relevant part,

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices that constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, . . . to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. . . .

15 U.S.C. § 77t(b). The Exchange Act contains a similar provision authorizing injunctive relief. *See* 15 U.S.C. § 78u(d)(1). Numerous courts, including the Eleventh Circuit, have construed these statutory sections to authorize injunctions to prevent future securities laws violations. *See SEC v. Carriba Air, Inc.*, 681 F.2d 1318 (11th Cir. 1982); *see also SEC v. Globus Group, Inc.*, 117 F. Supp. 2d 1345, 1346 (S.D. Fla. 2000) (Jordan, J.).<sup>1</sup> Although, generally, “equity will not enjoin a crime,” the Eleventh Circuit has explained, this is not an “ironclad rule.” *Id.* at 1321. Rather, an exception for “public nuisances that [are] also crimes” exists. *Id.* (citing *Attorney Gen. v. Richards*, 145 Eng. Rep. 980 (1794)). Because the Eleventh Circuit has concluded that violations of the securities laws “are analogous to public nuisances,” the Eleventh Circuit has held that courts may enjoin future securities laws violations. *Id.*

In this Circuit, the SEC “is entitled to injunctive relief when it establishes (1) a prima facie case of previous violations of federal securities laws, and (2) a reasonable likelihood that the wrong will be repeated. *SEC v. Calvo*, 378 F.3d 1211, 1216 (11th Cir. 2004) (citing *SEC v. Unique Fin. Concepts, Inc.*, 196 F.3d 1195, 1199 n.2 (11th Cir. 1999)). In determining the probability that a party will again engage in violations of the securities laws, a court should consider the “egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against

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<sup>1</sup>*But see SEC v. Sky Way Global, LLC*, 710 F. Supp. 2d 1274 (M.D. Fla. 2010). Building on *dicta* from a footnote in *SEC v. Smyth*, 420 F.3d 1225 (11th Cir. 2005), the *Sky Way Global* Court concludes that injunctions to prevent future securities violations are neither authorized by the cited statutory provisions nor constitutional unless they are drafted narrowly to preclude specific, foreseeable violations (*e.g.*, violations of the securities provisions as they relate to a particular company that is the subject of the underlying action). As the *Sky Way Global* Court recognizes, however, “a panel [of the Eleventh Circuit] cannot overrule a prior one’s holding even though convinced it is wrong.” *Id.* at 1294 (quoting *United States v. Steele*, 147 F.3d 1316, 1318 (11th Cir. 1998); *Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1072 (11th Cir. 2000)). And a district court, of course, cannot overrule a panel’s holding, either, even where, as in *Sky Way Global*, the district court views the panel’s decision as having “inadequately analyze[d]” the issue and as not “merit[ing] adherence.” *See Sky Way Global*, 710 F. Supp. 2d at 1294.

future violations, the defendant's recognition of the wrongful nature of the conduct, and the likelihood that the defendant's occupation will present opportunities for future violations." *Id.* (quoting *Carriba Air*, 681 F.2d at 1322 (quotation marks and internal citations omitted)).

## **REMEDIES**

### **Permanent Injunctive Relief Against Santamaria Is Warranted**

The Complaint seeks injunctive relief against Santamaria for future violations of Securities Act Section 17(a)(1), Exchange Act Section 10(b), and Exchange Act Rule 10b-5(a) and (c). The Commission is entitled to injunctive relief when it establishes (1) a violation of the federal securities laws and (2) a reasonable likelihood of future violations. *SEC v. Calvo*, 378 F.3d 1211, 1216 (11th Cir. 2004); *Unique Financial Concepts*, 196 F.3d at 1199 n.2.

The Commission has already established the first prong by showing that Santamaria violated the federal securities laws. In determining whether a defendant is reasonably likely to continue to violate the securities laws, courts consider the following factors:

- (1) the egregiousness of the defendant's actions;
- (2) the isolated or recurrent nature of the violations;
- (3) the degree of scienter involved;
- (4) the sincerity of the defendant's assurances against future violations;
- (5) the defendant's recognition of the wrongful nature of his conduct; and
- (6) the likelihood that the defendant's occupation will present opportunities for future violations.

*SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir. 1982) (citing *SEC v. Blatt*, 583 F.2d 1325 (5th Cir. 1978)); *SEC v. Youmans*, 729 F.2d 413, 415 (6th Cir. 1984).

All but the second factor are present here. First, Santamaria's conduct in connection with VDPH was egregious. Santamaria agreed to and directly participated in a stock purchase scheme

involving a purportedly corrupt promoter. Over the course of six weeks, Santamaria agreed to and helped orchestrate a scheme to generate the appearance of market interest in VDPH, induce public purchases of the stock, and artificially increase its trading price and volume. The egregious nature of Santamaria's actions is further demonstrated by the fact that he has been convicted of criminal violations of the securities laws for the very same behavior. ECF No. 1 ¶¶ 14-32. These same facts also demonstrate the third element, Santamaria's high degree of scienter.

With respect to the fourth and fifth factors, other than waiving service of a summons, Santamaria has not responded to this lawsuit. Given his failure to appear in this action, the Court does not have any assurances that he will avoid future misconduct. Similarly, there is no way to know what Santamaria will do in the future; therefore, it is entirely possible that his future occupation will provide the opportunity to re-offend if the Court does not enjoin him. His failure to answer this lawsuit raises doubts that he will avoid such opportunities. As a result, Santamaria's conduct warrants the Court's entering of a permanent injunction against him.

#### **Penny Stock Bar**

Pursuant to Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6), and Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), the Court may permanently bar Santamaria from participating in any offering of any penny stock. Section 21(d)(6) of the Exchange Act and Section 20(g) of the Securities Act permit a federal court to impose a penny stock bar against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock.

During the period of the fraud in this case, VDPH stock qualified as a penny stock because it did not meet any of the exceptions from the definition of a penny stock, as defined by

Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. The securities were equity securities (1) that were not an “NMS stock” as defined in 17 C.F.R. § 242.600(b)(47); (2) that traded below five dollars per share during the relevant period; (3) whose issuer had net tangible assets and average revenue below the threshold of Rule 3a51-1(g)(1); and (4) did not meet any of the other exceptions from the definition of “penny stock” contained in Rule 3a51-1 of the Exchange Act. ECF No. 1 at ¶ 10. Santamaria participated in an offering of a penny stock because he engaged in activities for the purpose of issuing, trading, and inducing or attempting to induce the purchase or sale of securities. *Id.* ¶¶ 14-26.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff’s Motion for Entry of a Default Judgment of Permanent Injunction and Other Relief Against Defendant Peter Santamaria [ECF No. 26] is **GRANTED**. Default Judgment is entered against Defendant Santamaria as follows:

**I.**

**SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934**

It is **ORDERED and ADJUDGED** that Defendant Santamaria and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5(a) and 10b-5(c) 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; or

- (b) 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 about the price or trading market for any security, or (ii) making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company.

## II.

### **SECTION 17(A)(1) OF THE SECURITIES ACT OF 1933**

It is further **ORDERED and ADJUDGED** that Defendant Santamaria and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are 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, to employ any device, scheme, or artifice to defraud by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person about the price or trading market for any security, or (ii) making any false or misleading statement, or disseminating any false or misleading documents, materials, or information, concerning matters relating to a decision by an investor or prospective investor to buy or sell securities of any company.

## III.

### **PENNY STOCK BAR**

It is further **ORDERED and ADJUDGED** that Defendant Santamaria is permanently barred 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 of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act, 17 C.F.R. 240.3a51-1. During the relevant period, the security Santamaria attempted to manipulate qualified as a penny stock because it did not meet any of the exceptions from the definition of a penny stock, as defined by Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. The securities were equity securities (1) that were not an “NMS stock” as defined in 17 C.F.R. § 242.600(b)(47); (2) that traded below five dollars per share during the relevant period; (3) whose issuer had net tangible assets that average revenue below the threshold of Rule 3a51-1(g)(1); and (4) did not meet any of the other exceptions from the definition of “penny stock” contained in Rule 3a51-1 of the Exchange Act. Santamaria participated in manipulative offering of a penny stock because he engaged in activities for the purpose of issuing, trading, and inducing or attempting to induce the purchase or sale of securities.

#### IV.

#### **DISGORGEMENT AND PREJUDGMENT INTEREST**

It is further **ORDERED and ADJUDGED** that Defendant Santamaria shall pay disgorgement of ill-gotten gains, prejudgment interest, and a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission to be made within 90 days of the date Santamaria is sentenced in the matter *United States v. Greene, et al.*, 13-cr-60203-KAM (S.D. Fla.). Prejudgment interest shall be calculated from March 15, 2012, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26

U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalty, and at any hearing held on such a motion: (a) Santamaria will be precluded from arguing he did not violate the federal securities laws as alleged in the Complaint; (b) Santamaria may not challenge the validity of this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c), Fed. R. Civ. P. In connection with the Commission's motion for disgorgement or civil penalty, the parties may take discovery, including discovery from appropriate non-parties.

**V.**

**RETENTION OF JURISDICTION**

It is further **ORDERED and ADJUDGED** that this Court shall retain jurisdiction over this matter and Defendant Santamaria in order to implement and carry out the terms of all Orders and Decrees that may be entered and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

**VI.**

**RULE 54(b) CERTIFICATION**

It is further **ORDERED and ADJUDGED** that 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

Judgment forthwith and without further notice.

**DONE and ORDERED** at Fort Lauderdale, Florida, this 27th day of January 2014.

  
**ROBIN S. ROSENBAUM**  
**UNITED STATES DISTRICT JUDGE**

cc:

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